



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF APRIL, 2023

BEFORE

THE HON'BLE MR JUSTICE N S SANJAY GOWDA

WRIT PETITION NO. 24346 OF 2015 (GM-RES)

BETWEEN:

M/S OZONE PROPERTIES PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE
COMPANIES ACT 1956, AND HAVING ITS
CORPORATE OFFICE AT
OZONE GROUP, NO.38, ULSOOR ROAD,
BANGALORE-560 042,
REPRESENTED BY ITS GENERAL MANAGER
MR SREEHARI M

...PETITIONER

(BY SRI. N.ANAND, ADVOCATE)

AND:

1. DIRECTOR
SOFTWARE TECHNOLOGY PARKS OF INDIA,
DEPT. OF ELECTRONICS & INFORMATION
TECHNOLOGY
NO.76 & 77, 6TH FLOOR,
CYBER PARK,
ELECTRONICS CITY,
HOSUR ROAD,
BANGALORE-560 100.
2. THE DIRECTOR GENERAL OF FOREIGN TRADE
H WING, ROOM NO.9,
UDYOG BHAWAN,
MAULANA AZAD ROAD,
NEW DELHI-110 011.





3. THE JOINT DIRECTOR
GENERAL OF FOREIGN TRADE
C & E WING, 6TH FLOOR,
KENDRIYA SADAN,
7TH MAIN, 2ND BLOCK,
KORAMANAGALA,
BANGALORE-560034

...RESPONDENTS

(BY SRI. PRADEEP K.R., ADVOCATE FOR R-1;
SRI. H.SHANTHI BHUSHAN, DSGI FOR R-2 & R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE INDIAN CONSTITUTION PRAYING TO QUASH THE ORDER DATED 1.5.2015 VIDE ANNEXURE-J ISSUED BY R-1 AS BEING WITHOUT JURISDICTION AND THUS ILLEGAL AND UNTENABLE IN LAW, ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. This writ petition is filed challenging the order passed by the Director of Software Technology Parks of India on 01.05.2015.
2. By the said order, the request of the petitioner to permit it to exit from the scheme has been rejected on the ground that petitioner had not submitted periodic performance report during the validity of letter of



permission and as agreed in legal undertaking which amounted to non-compliance of the conditions. The order states that the petitioner should vacate all the non-software technology park units and resubmit the application seeking for exit with proof of said vacation.

3. It is not in dispute that the petitioner was licenced as infrastructure service provider and as a result, it was entitled to certain benefits under Chapter – VI of Foreign Trade Policy. Clause 6.18 of Chapter – VI deals with exit from EOU scheme. For the purpose of this case, clause (a) and (e) reads is relevant and the same as follows:

(a) With the approval of the Development Commissioner, EOU units may opt out of the scheme, such exit from the scheme shall be subject to payment of Excise and Customs duties and the industrial policy in force at the time of exit.

(e) The unit proposing to exit out of the EOU scheme shall intimate the Development Commissioner and Customs and Central Excise authorities in writing. The unit shall assess the



duty liability arising out of debonding and submit the details of such assessment to customs and Central Excise authorities. The Customs and Central Excise authorities shall confirm the duty liabilities on priority basis. After payment of duty and clearance of all dues the unit shall obtain "No Dues Certificate" from the Customs and Central Excise authorities. On the basis of No dues certificate so issued by the Customs and Central Excise authorities, the unit shall apply to the Development Commissioner for final debonding. In case there is no proceeding pending under FT (DR) Act, 1992, the Development Commissioner shall issue final debonding order within a period of 7 working days. During the period between "No dues certificate" issued by the Customs and Central Excise authorities and the final debonding order by the Development Commissioner, the unit shall not be entitled to claim any exemption for procurement of capital goods or input. The unit can however, claim Advance License/DEPB/Duty Drawback."

4. As could be seen from the provisions of the scheme, the objective of the clause is to ensure that an entity which has taken some benefit in the form of importing



capital goods without payment of duty, the same would not be entitled to exit from the scheme without making good the duties that it had availed off. The objective of the scheme is essentially to ensure that an entity does not take the benefit of the scheme and thereafter withdraw from the scheme and make a profit out of the entire venture.

5. The petitioner admittedly made an application seeking for exit from the scheme and it was its specific case that it had not imported any capital goods or procured any capital goods in respect of project.

6. The authority which considered the application of the petitioner has stated as follows:

9) From the above facts and the records of the unit available with us, the following points were observed:

(a) ISP has not imported any capital goods or procured any capital goods from DTA under CT3 procedures.



(b) ISP has provided the first space to M/s Blue Star Ltd. Bangalore which is not under STPI scheme, sometime in mid-2009, i.e., during the validity of LoP.

(c) The Board of Directors of ISP vide resolution dt:04.01.2011, resolved to make the application to STPI Bangalore for the exit from STP scheme due to the fact that premises could not be let exclusively for software exporting units in view of the recessionary market conditions.

(d) ISP has not informed in writing to Director STPI Bangalore regarding providing the infrastructure services to the companies, during the validity of LoP.

(e) During the validity of LoP ISP has not submitted MPR/QPR/APR, except the IT park Progress Report vide E-mail dated: 10 June 2009.

(f) ISP has requested for the exit from STP scheme vide letter dt: 03.09.2010, dt:23.06.2011 and dt:03.02.2014."

7. As could be seen from the said finding recorded by the authority, the petitioner had not imported any capital



goods or procured any capital goods for setting up the software technology park. It is, therefore, clear that it was not obliged to reimburse any amounts for exiting from the scheme.

8. The clause relating to exit from the scheme does not entitle the authority to reject the application on the ground that the periodical performance report had not been furnished. In this case, the authority has in fact stated that the petitioner did furnish the IT park progress report as per its email dated 10.06.2009. The mere non-compliance of a procedural requirement cannot prevent the petitioner from exiting from the scheme.

9. However, learned Deputy Solicitor General vehemently contended that the petitioner ought not to be granted any discretion since the periodic performance reports were not furnished and this was an essential term of the licence. He also contended that as against the impugned order there was an appeal provided and



therefore, without availing the appellate remedy, the present writ petition could not have been filed.

10. As already stated above, the furnishing of periodic status report did not result in any monetary benefit to the petitioner and it was only procedural requirement which it had to comply. If the petitioner had not taken any monetary benefit by virtue of the licence granted to it, its exit cannot be denied.

11. As far as the argument that an appellate remedy is available, it is to be stated here that the matter is pending before this Court since eight years and after a period of eight years, relegating the petitioner to avail the appellate remedy would neither be just, nor proper.

12. In the light of the fact that the petitioner has not availed any benefit under the scheme, the impugned order cannot be sustained and the same is therefore, quashed. The authority is directed to permit the petitioner to exit from the scheme.



Writ Petition is accordingly allowed.

**Sd/-
JUDGE**

PKS
List No.: 2 SI No.: 7

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