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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 6960/2016

M/S TATA COMMUNICATIONS LTD AND ANR ..... Petitioners

Through: Mr M.P. Devanath, Mr Abhishek Anand and Mr Udit Jain, Advocates.

versus

UNION OF INDIA AND ORS ..... Respondents

Through: Mr Anurag Ahluwalia, CGSC with Mr Lokesh, HD, Joint DGFT and Mr Praveen Kumar, Deputy DGFT for R-1 to 3.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **20.09.2017**

1. The petitioner has filed the present petition, *inter alia,* impugning the decision of the Policy Relaxation Committee (hereafter 'PRC') denying the petitioner's request for extension of the period of validity of Duty Credit Scrips issued under the Served from India Scheme (hereafter 'the SFIS Scheme'). The petitioner had applied for the Duty Credit Scrips for the financial years 2006-07, 2007-08, 2008-09 and 2009-10 under the SFIS Scheme on 17.12.2007, 16.12.2008, 10.12.2009 and 02.01.2011 respectively. The said scrips were not provided to the petitioner and respondent no.2 issued a circular - Policy Circular No. 25 of 2007 - restricting SFIS entitlement to telecom companies such as the petitioner.

2. After exhausting all avenues with respondents, the petitioner

approached the Bombay High Court by way of a writ petition (being W.P.(C) 932/2011), *inter alia*, challenging the circular dated 15.07.2010 issued by the Directorate General of Foreign Trade (DGFT) as well as the decision of the Policy Interpretation Committee (PIC) dated 05.07.2010. The said petition was allowed and by an order passed on 5/6.07.2011, the circular dated 15.07.2010 was struck down as *ultra vires* of the Foreign Trade Policy 2004-09. It was further directed that the petitioner's entitlement to benefits under the SFIS scheme be examined. The said order passed by the Bombay High Court was carried in appeal before the Supreme Court. The Special Leave Petition preferred by the respondents, was granted, however, the interim relief sought by the respondent was denied.

3. In this view, the respondents were bound to examine the petitioner's case for grant of Duty Free Scrips under the SFIS Scheme; but failed to do so. This led the petitioner to once again approach the Bombay High Court by way of a writ petition (bearing No. W.P.(L) 2916/2013) which was disposed of on 03.12.2013, by issuing the following directions:-

> "(i) The Respondents shall immediately issue the scrips for the amounts on net basis as indicated in column-4 above, subject to verification in accordance with judgment dated 5/6 July 2011 of this Court in Writ Petition No. 932 of 2011, within two weeks from today;
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> (ii) The Respondents shall verify the Petitioner's claim for SFIS benefits in light of the judgment dated 5/6 July 2011 of this Court in Writ Petition No. 932 of 2011 for granting the benefit on gross basis as indicated in column-3 above, as expeditiously as possible and in any case within two months from today."

4. The Duty Free Scrips were issued on the net basis and aggrieved by the same, the petitioner once again approached the Bombay High Court (in writ petition No. 2734 of 2013) and on 24.12.2013, the court granted the respondents one week's time to comply with the directions contained in the order dated 03.12.2013 in respect of Duty Free Scrips for the years 2007-08 and 2008-09; insofar as Scrips for the 2009-10 are concerned, the respondents were granted further time of three weeks from the said date to provide the Scrips and the matter was stood over.

5. On 20.01.2014, the Bombay High Court passed an order, the relevant extract of which is quoted below:-

> "5). In view of the specific order of the Supreme Court, it is not open to this Court to entertain the request made by the Learned Counsel for the department to grant them further time. The request is therefore rejected. The department shall implement the directions given by this Court in Judgment dated 5/6 July 2011 on or before 3 February 2014. However, a Director of the Petitioner-Tata Communications Limited who is authorized by resolution of the Board of Directions, shall file an undertaking to the effect that in case the department succeeds in the Supreme Court the petitioner shall return the scrips to be issued to the petitioner in compliance of the Judgment dated 5/6 July 2011. Undertaking as aforesaid shall be filed within one week from today."

6. In compliance with the orders passed by the Bombay High Court, the respondents issued the Duty Free Scrips on 31.12.2013 and 11.03.2014. The Duty Free Scrips issued to the petitioner on 31.12.2013 were fully utilised by the petitioner. However, the balance scrips for a sum of ₹167,48,61,649/-

issued to the petitioner on 11.03.2014, which pertain to the FY 2007-08 and 2009-10 could not be utilised to the full extent. The validity of the said scrips expired on 02.09.2015.

7. It is in the aforesaid context that the petitioner, applied for re-validation of the Duty Free Scrips. The plain rationale for seeking such extension is that the petitioner was granted Duty Free Scrips for four years at one time and thus, could not utilise the same in a timely manner. The petitioner also states that during the financial years 2006 to 2010, the petitioner paid duty to the extent of ₹96 crores and in the event, the Duty Free Scrips were made available to the petitioner during the said period, the petitioner would have been able to utilise the same.

8. There is no denying of the fact that if the Duty Free Scrips had been made to the petitioner in a timely manner, the petitioner may have been able to utilise the same and avail of the benefits of the SFIS Scheme. The Duty Free Scrips pertaining to four years being issued to the petitioner at one go does appear to have caused some genuine difficulties to the petitioner.

9. It is seen from the impugned order passed by the PRC that this aspect has not been adverted to by them. The PRC has proceeded solely on the basis that a period of 18 months was adequate for the petitioner to have utilises the scrips. The PRC also noted that the scrip was duly transferable and could be utilised within the group companies. However, this aspect whether the petitioner could have utilised the scrips, if they were granted in a timely manner, does not seem to have been considered.

10. The learned counsel appearing for the respondent pointed out that the

petitioner has an adequate remedy by seeking a review and a personal hearing before the DGFT in terms of paragraph 2.59 of the FTP 2015-20. He submits that in view of an equally efficacious alternate remedy available to the petitioner, this court should decline to interfere with the impugned order.

11. The contention advanced on behalf of the respondents is merited. This Court is refraining from examining the controversy, as this Court is of the view that the same should be considered by the DGFT.

12. Accordingly, the present petition is disposed of by directing that the same be treated as an application for review by the DGFT. DGFT shall after affording the petitioner an opportunity of being heard, pass a reasoned order, specifically considering the rationale provided by the petitioner for seeking extension of the Duty Free Scrips in the present petition.

13. The DGFT shall pass an order as expeditiously as possible and in any vent within a period of eight weeks from today. Needless to state that if the petitioner is aggrieved by the order passed by the DGFT, it would be at liberty to apply.

14. The petition is disposed of.

VIBHU BAKHRU, J

SEPTEMBER 20, 2017
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