

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 24.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.21623 of 2019

and W.M.P.No.20846 & 20850 of 2019

M/s.Khivraj Tech Park Pvt Ltd.
(Rep by its Authorized Signatory
Mr.Ajit Kumar Chordia)

.. Petitioner

Vs.

1.Union of India
The Secretary
Ministry of Communication Technology
Department of Information & Technology
No.6, CGO Complex, Lodhi Road
New Delhi 110 003.

2.M/s.Software Technology Park of India
No.22/2, I Floor, Sardar Patel Road
Adyar, Chennai- 600 029.

3.The Assistant Commissioner of Customs (EOU)
I Floor, Custom House
No.60, Rajaji Salai
Chennai - 600 001.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records of the first respondent in the impugned order No.1(13)/2005-ITP(Vol.III) dated 14.12.2018, quash the same and direct the first respondent to give effect to the communication No.1(13)/2005-ITP dated 29.11.2005 as having been effective with effect from 04.04.2005 being the date of the meeting in which approval for setting up of Software Technology Park was processed and recommended by the Inter Ministerial Standing Committee or to pass such further or other orders as this Hon'ble High Court may deem fit and proper in the facts and circumstances of the case.

For Petitioner : Mr.V.S.Manoj

ORDER

Mr.V.S.Manoj, learned counsel on record for writ petitioner is before this Court.

2. Writ petitioner made an application dated 25.01.2005 to the second respondent seeking permission for setting up a 'Software Technology Park' ('STP' for brevity). This Court is informed that second respondent functions under Ministry of Communication/Information Technology and it has been entrusted with the task of processing such applications.

3. Aforesaid application of writ petitioner was processed and a communication dated 29.11.2005, was sent by the Ministry of communication/ Information Technology, informing that writ petitioner's application was considered in the 'Inter-Ministerial Standing Committee' ('IMSC' for brevity) being IMSC on 'Software Technology Park' (STP) and 'Electronics Hardware Technology Park' ('EHTP') Schemes in a meeting held on 04.04.2005 and that an approval for setting up infrastructure facility for STP under STP scheme at Plot No.1, SIDCO Industrial Estate, Guindy, Chennai has been given.

4. There is no disputation or disagreement that prior to this 29.11.2005, there was no communication to the writ petitioner regarding writ petitioner's application dated 25.01.2005 for setting up a STP.

5. It is the case of the writ petitioner that certain imports had been made sometime in October-November 2005. These imports pertain to setting up of proposed STP is writ petitioner counsel's say and these imports have been made by claiming benefit of customs notification being Notification No.153/93. In this regard, writ petitioner sent a representation dated 09.02.2006 to the Director General of 'Software Technology Park of India' ('STPI'), Ministry of Communication Technology, Department of Information Technology. In this representation dated 09.02.2006, writ petitioner submitted that their imports had already arrived in Chennai Port during October-November 2005 and therefore sought amendment of effective date of approval their application and wanted effective date of approval to be made as 04.04.2005, so that the import consignment can be cleared by taking advantage of and by taking benefits under Customs Notification No.153/93. Most relevant portion of this representation dated 09.02.2006 reads as follows:

'Since our imports had already arrived in Chennai Port during October & November, the Custom Authorities, Chennai advised us to get a letter issued amending the date of effectiveness to that of 04.04.2005 so that the imports could be cleared without difficulty.

We therefore request you to kindly issue us with a Letter of Amendment effective this date.'

6. After sending a reminder on 21.03.2006 alleging inaction, writ petitioner filed an earlier writ petition in this Court being W.P.No.11793 of 2006. Prayer in W.P.No.11793 of 2006, as can be culled out from the case file placed before this Court reads as follows:

'Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records in 1 (13)/2005 - ITP dated 29.11.2005 of the 2nd respondent and to quash the same and to direct the 2nd respondent to modify the date of approval referred to therein to that of 25th January, 2005 being the date of application for approval or 4th April, 2005 on which date the Inter-Ministerial Standing Committee approved the project instead of 29th November, 2005 being the date on which the aforesaid proceedings were issued by the second respondent.'

7. To be noted, in the aforementioned earlier writ petition, second respondent is Senior Director, Government of India, Ministry of Communication and Information Technology, New Delhi.

8. While in the representation dated 09.02.2006, writ petitioner sought amendment of the approval to have effect from 04.04.2005, (date on which the IMSC meeting took place) in the writ petition prayer, writ petitioner had sought approval with effect from the date of the application itself viz., 25.01.2005. Ultimately, when the writ petition was taken up, writ petitioner, restricted/abridged its prayer and therefore, writ petition was disposed of with a direction to the respondent concerned to consider the representation of the petitioner dated 09.02.2006 and reminder dated 21.03.2006. Most relevant part of the order is contained in paragraphs 3, 4 and 5, which read as follows:

'3.The learned counsel appearing for the petitioner would submit that without going into the merits of the case, it would suffice, if this Court directs the first respondent to consider the representations of the petitioner dated 09.02.2006 and 21.03.2006, in accordance with law.

4.Considering the limited scope of the prayer now sought for by the learned counsel appearing for the petitioner, this Court directs the first respondent to consider the representations of the petitioner dated 09.02.2006 and 21.03.2006, in accordance with law, if the same have not been considered already and pass appropriate orders as early as possible.

5.The writ petition is accordingly disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.'

9. Pursuant to the aforesaid order, Government of India, Ministry of Electronics & Information Technology, to be precise, Secretary to the Government of India with regard to the said Ministry has passed an order dated 12.12.2018.

10. In this order, after referring to the earlier order of this Court dated 21.06.2018 (operative and relevant portion of which has been extracted and reproduced supra), the Ministry has not acceded to the request of the writ petitioner (vide representation dated 09.02.2006 and reminder dated 21.03.2006) to amend the date of approval and make the date of approval effective from the date of application itself viz., 25.01.2005. This order dated 12.12.2018 has been called in question in the instant writ petition and therefore, the same shall be referred to as 'impugned order'. To be noted, in prayer in the writ petition and the affidavit filed in support of the instant writ petition, petitioner has mentioned the date of impugned order as 14.12.2018 instead of 12.12.2018 and this order of first respondent dated 12.12.2018 has been communicated to the petitioner vide order dated 17.12.2018.

11. A perusal of the impugned order reveals that the reason given by the Ministry for not acceding to the request of the writ petitioner to make the effective date an earlier date i.e., date of application itself is that writ petitioner was well aware that only a Letter of Intent (LOI) had been given and LOP i.e., Letter of Permission had not been given, but the writ petitioner went ahead and imported the goods in October-November 2005. Having imported goods in October-November 2005 itself without waiting for LOP, writ petitioner cannot make a request now to advance the effective date of approval merely to take advantage and get benefit under a Customs notification.

12. It is very clear that the application is dated 25.01.2005 and the earliest point of time at which the writ petitioner was informed about the approval of its application for setting up STP is only 29.11.2005, but writ petitioner has chosen to make imports in October-November 2005 itself. In other words, writ petitioner has jumped the gun and made imports even before approval of its application was communicated to it on 29.11.2005. To state this with clarity and specificity, on the dates of imports in October-November 2005, writ petitioner did not have any communication regarding approval of its application for setting up STP. Therefore, having imported without any document in its hand with regard to approval of its

application for STP, writ petitioner cannot now be heard to contend that effective date of approval should be advanced to an earlier point of time.

13. This Court has carefully considered the submissions made by learned counsel for writ petitioner in the hearing today, which was reiteration of factual scenario set out supra. In the considered opinion of this Court, no tenable arguments has been made to say that the impugned order needs to be interfered with when the refusal to advance the effective date is based on the undisputed factual position that writ petitioner had only LOT and went ahead without waiting for LOP.

14. In the aforesaid backdrop, as this Court does not find any ground to interfere with the impugned order, instant writ petition fails and the same is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

vsm

To

1.The Secretary, Union of India
Ministry of Communication Technology
Department of Information & Technology
No.6, CGO Complex, Lodhi Road
New Delhi 110 003.

2.The Assistant Commissioner of Customs (EOU)
I Floor, Custom House
No.60, Rajaji Salai
Chennai - 600 001.

+lcc to Mr.K.Vaitheeswaran, Advocate sr.63557

+lcc to M/s.A.P.Srinivas, Advocate sr.63942

W.P.No.21623 of 2019 and
WMP Nos.20846 & 20850 of 2019

nrl(co)
nr 17/09/2019