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SOFTWARE TECHNOLOGY PARK SCHEME

India has become one of the leading countries in the world for creation, generation, manufacture and export of software. In the last decade or so we have established an enviable niche for ourselves in the global software industry.

To meet the growing demand and to give a fillip to our software industry, Government has established Software Technology Parks (STPs), wherein centralized facilities for design, development and export in the field of software and software engineering have been provided.

Societies have been set up by the Department of Electronics called as Software Technology Park Society with a Chief Executive as its head. Individual software development units are also allowed with the benefits of STP 100% EOU scheme.

Inter-Ministerial Standing Committee (IMSC) on Mini Computers/Micro Computer based items and Computer Software has been set up inter alia for ensuring overall encouragement and software development.

Application of software units, for working in earmarked areas with requisite facilities for development of Software for 100% exports will be cleared by IMSC.

Salient features of the STP scheme

Government has already set up seven STPs at Pune, Bangalore, Bhubaneshwar, Hyderabad, Thiruvananthapuram, Gandhinagar and Noida.

These parks have been set up with following objectives.

- To establish and manage the infrastructural resources and to provide service to the users of development and export of software and charge for the service rendered.
- To carry out development and export of software and software services.
- To undertake export promotion services.
- To undertake and encourage design and development in the field of software and software engineering.
- The STP may be set up by the Central Government, State Government, Public or Private Sector undertaking or any combination thereof.
- STP units may be set up anywhere in India.

® An organization setting up a STP complex for development and export of software may import under the scheme, duty free infrastructural equipments.

® STP complexes can import telematic infrastructure without any customs duty.

Software Technology Parks (STPs) Scheme

The STP Scheme is a 100% export oriented scheme for undertaking software development for export using data communication link or in the form of physical exports including export of professional services.

A Software Technology Park may be set up by the Central Government, State Government, Public or Private Sector Undertakings or any combination thereof.

A STP may be an individual unit by itself or it may be one such units located in an area designated at STP Complex by the Department of Electronics.

The Scheme is administered by the Department of Electronics, Government of India, through Directors of respective Software Technology Parks which form part of the Software Technology Parks of India, a Society established by the Department of Electronics, Government of India and registered under Societies Registration Act, 1860.

An application in the prescribed format for establishing a Software Technology Park unit may be submitted to the Chief Executive of Software Technology Park Complex along with the details of the software projects. Such application will be considered by an Inter-Ministerial Standing Committee constituted under Chairmanship of Secretary, Department of Electronics, Government of India, notified vide Gazette Notification No.294 dated August 13th, 1991, published in sub-section (i) of section 3 of Part II of Extraordinary Gazette of India and reconstituted by the Notification of Ministry of Industry vide Gazette Notification No.S.O.188(E) dated February 22nd, 1993 published in Part II section 3 sub-section (ii) of Extraordinary Gazette of India.

A STP unit may import free of duty all types of goods, including capital goods, required by it for manufacture, production or processing provided they are not prohibited items in the Negative List of Imports.

The Software Technology Parks of India may also import free of duty all types of goods, for creating the central facility for use by software development units in the STP complex. STP units shall also be permitted to import capital goods on loan from clients for specified periods for executing specified projects.

The STP unit will be duty free custom bonded area. The normal procedure applicable for custom bonding will be followed.

The entire software (including consultancy fees, software services and sale of software) developed by the STP unit shall be exported except the sales in the Domestic Tariff Area (DTA). The sales in the DTA shall be permissible up to 25% of the production in value terms made by the STP unit.

Export Obligation

The Export Obligation of a STP unit in net foreign exchange terms shall be as follows:

Export Obligation = 1.5 x (CIF value of the hardware imported) + 1.5 x (wage bill)

Approval of the Unit

Approval of such units under STP scheme is routed through the Director-STP. The powers for approvals of projects having project value up to Rs.10 crores having Indian equity have been delegated by Inter-Ministerial Standing Committee to the Director of the STP vide Department of Electronics (DoE) Office Order No.12 (12) COM/87-85 dated 3.12.1992.

Declaration of the place as a Warehousing Station

The second requirement to operate such units is to get the place declared as warehousing station by the jurisdictional Commissioner of Central Excise and Customs, if the place is not already declared as a warehousing station.

Application for a Private Bonded Warehouse Licence

Basically the STP scheme operates in two parts. In the first category, the STP Complex provides the necessary infrastructure for creating the central facility for the user unit. The second category is the independent private units, who create their own infrastructure facilities, but still get governed by the STP norms.

Units operating under both these schemes require Private Bonded Warehouse Licence under section 58 the Customs Act, 1962 with a bond for manufacturing facility under section 65.

For this purpose, the unit may apply in the standard format in triplicate to the jurisdictional Assistant Commissioner (AC) along with the following documents /information.

® Whether the place has been declared as a warehousing station under section 9 of the Customs Act, 1962.

® Letter of Approval from the Director STP allowing the 100% EOU status to the unit or Letter of Intent/Permission from SIA, as the case may be (3 copies).

® True copy of agreement for export obligation executed with Director, STP.

® Allotment letter from State Industrial Development Corporation if the factory is in the industrial area. In other cases, no objection certificate from the local authority (like Corporation/Gram Panchayat).

® Purchase/lease deed of building/premises (3 copies).

® Ground plan of the premises (to be verified by the jurisdictional range Superintendent (3 copies).

® List of Imported and indigenous capital goods for setting up the 100% EOU along with the estimated cost duly certified by Director STP.

Benefits

The STP unit shall be eligible for the following benefits:

® The STP unit will be exempted from payment of corporate income tax for a block of five years in the first eight years of its operation.

® Foreign equity up to 100% is permissible in case of STP units.

® Supplies made from DTA to a STP unit will be regarded as deemed export and will be eligible for the benefits specified in the Export and Import Policy. Such benefits shall be available provided the goods

supplied to the STP unit are manufactured in the country.

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IN FOCUS

FOREIGN INVESTMENT

Norms relaxed for venture capital investments

In an attempt to attract venture capital investments, particularly foreign direct investment (FDI), the Union Government has recently relaxed the venture capital guidelines.

These relaxations include a mix of fiscal and procedural norms, including the expansion of the definition of "infrastructure facility" under the venture capital guidelines, the dispensation of the three-year lock-in applicable on venture capital investments and the freeing of investment norms stipulated for venture capital companies, so that they can avail of tax exemptions.

Currently, income by way of dividends or long-term capital gains of a venture capital fund or a venture capital company from investments in the equity of a venture capital undertaking are exempt from tax, provided these companies and funds subscribe to several stringent investment norms.

These norms include a three-year lock-in on investments. Additionally, to avail tax benefits the venture capital companies have to subscribe to a mandatory investment pattern over the three years. The investment pattern prescribed includes mandatory investment of 20 per cent, 50 per cent and 80 per cent of the funds by the venture capital company over a period of three years in a venture capital undertaking, to be eligible for tax shield.

Both these norms prescribed in Rule 2D under the provisions of Section 10 (23F) of the Income tax Act have now been removed.
Additionally the definition in Section 10 (23F) of the Income-tax Act has been expanded. This Section deals with exemptions of venture capital earnings from taxation. The definition has now been expanded to include roads, highways, bridge, airport, port, rail system or any other public facility of a similar nature as may be notified by the Central Board of Direct Taxes (CBDT).

Currently, the sectors eligible for tax exemption include manufacturing, power, telecom services, electricity and other infrastructure including computer software. Section 10 (23F) grants the CBDT powers to notify additional sectors, based on which the current round of relaxation has taken place.

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TEXTILES SECTOR

Foreign direct investment allowed in Garments sector.

The Union Government has decided to throw open the garment industry for investment by big players – both domestic and foreign, without any restriction. Unveiling a new national policy, which was recently cleared by the Union Cabinet the Textiles Minister said there would be no cap on foreign direct investment in the sector.

The new policy includes setting of a target to increase textiles and apparel exports to $50 billion and a commitment to en-courage the private sector to set up integrated complexes and units and to assist it in setting up specialized financial arrangements to fund the diverse needs of the industry.

The policy also envisages a review of the duty structure, launching of a technology mission on jute, increase in cotton productivity by at least 50 per cent and setting up of a venture capital fund to encourage entrepreneurship among technocrafts. Garment exports were the single largest foreign exchange earner. It amounted for $ 6 billion of the $ 11 billion earned by the textile industry as a whole and the aim was to ensure that it continued to do so.

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WATER

New incentives for investors in inland waterway projects

The development of an inland water transport system received a boost with the Centre recently clearing a package of amendments to the Inland Waterways Authority of India Act. The Inland Waterways Authority of India (IWAI) will be allowed to float bonds for mobilising funds from the market and enter into commercial and joint ventures. The package also provides for grant of 100 per cent tax exemption to investors for five years and a further 30 per cent exemption for the next five years, as in the case of the national highways sector; introduction of a 30 per cent building subsidy for inland water vessels constructed in Indian shipyards; and fixing of the rate of depreciation for vessels operating in inland waterways on a par with that of ocean going ships.

Approval was also given for policy guidelines for private sector participation in inland waterway projects subject to equity participation by the Government/the IWAI being limited to 40 per cent for the Build, Operate and Transfer projects.

India has now 14,500 km of navigable waterways, of which 5,700 km can be used by mechanised vessels. Three important waterways, covering 2,700 km, have been declared national waterways. These are the Ganga-Bhagirathi-Hooghly river system, from Allahabad to Haldia (1,620 km), the west coast canal from Kottapuram to Kollam along with the Champakara and Udyogmandal canals (205 km) and the stretch of the Brahmaputra from Dhubri to Sadiya (891 km).

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LEGAL SNIPPET

SUPREME COURT OF INDIA

Malaysian Airlines Systems BHD (II)
Vs.
Stic Travels (P) Ltd.

Arbitration Petition No.18 of 2000
November 30, 2000

Facts:

The petitioner, a foreign company, having its office in Delhi, filed a petition under section 11(5) for appointment of Arbitrator alleging that the respondent Indian-company had failed to return the amounts due under a contract between them and refused to concur with its proposal for appointment of an Arbitrator to adjudicate the dispute. The respondent contested the petition contending that the agreement in question had ceased to exist and hence, there was no arbitration clause, that the notice was bad in law, that the person who filed the petition on behalf of the petitioner-company had no authority to file the petition, that the original agreement was not with the respondent as alleged by the petitioner, that the termination of agreement by the petitioner-company was bad, and that the cause of action had not arisen in India since the law applicable in terms of the contract was Malaysian law and there was no liability to refund/payment of amount to the petitioner. It was contended that there were no disputes or differences, which could be referred for arbitration. In as much as the petitioner had contended

that the respondent was in possession of the original agreements and the respondent had contended that the originals were with the petitioner, a question arose as to whether, as required by section 8, the petitioner had complied with the requirement of the said section or whether secondary evidence could be permitted to be adduced. Yet another question raised was that after termination of the agency, there was no agreement in existence and, hence, the arbitration clause could not be invoked.

Decisions and Reasons:

The question arose whether such issues raised at the stage of section 11 application or at the stage of section 8 proceedings could be decided by the Court. Three-Judge Bench of the Supreme Court in Konkan Railway Corpn. Ltd. V. Mehul Construction Co. JT 2000 (9) SC 36 has taken the view that the Chief Justice or his nominee is performing an administrative duty and cannot decide the preliminary issue at this stage and it is for the Arbitrator alone to decide the same. In view of the said judgement in Konkan Railway Corpn, Ltd.'s case (supra) the preliminary issue had to be declined and the matter had to be straightaway referred to an Arbitrator.

Under article 11(5) of the Uncitral Model Law, all that is required is for the Court to take into account the advisability of appointing an Arbitrator of a nationality other than those of the parties'. In fact, in several countries which have adopted the Uncitral Model, 1985, it is clear that the point relating to nationality is only a factor to be kept in mind. In several countries where the Uncitral Model is adopted, it has been held that it is not impermissible to appoint an Arbitrator of a nationality of one of the parties to the arbitration.

In the light of the rules in various countries and rulings of the Court and also in view of the fact that the 1996 Act is based on Uncitral Model law, which in article 6(4) only speaks of 'taking into account' the nationality as one of factors it is clear that the word 'may' in section 11(9) is not intended to be read as 'must' or shall while nationality of the Arbitrator is a matter to be kept in view. It does not follow from section 11(9) that the proposed Arbitrator is necessarily disqualified because he belongs to the nationality of one of parties. The word 'may' is not used in the sense of 'shall'. The provision is not mandatory.

In case the party, who belongs to a nationality other than that of the proposed Arbitrator, has no objection, the Chief Justice of India (or his nominee) can appoint an Arbitrator belonging to a nationality of one of the parties. In case, there is objection by one party to the appointment of Arbitrator belonging to the nationality of opposite party, the Chief Justice of India (or his nominee) can certainly consider the objection and see if an Arbitrator not belonging to the nationality of either parties can be appointed.

While taking that decision, the Chief Justice of India (or his nominee) can also keep in mind, in cases where the parties have agreed that the law applicable to the case is the law of a country to which one of the parties belongs, whether there will be an overriding advantage to both parties, if an Arbitrator having knowledge of the applicable law is appointed.

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