

GIB/DL/ERICSSON INDIA/27.04.2021/HC-204

High Court Category : Classification of Services

State : Delhi

Order No.: GIB/DL/ERICSSON INDIA/27.04.2021/HC-204

Name of Entry :
ERICSSON INDIA GLOBAL SERVICES PVT LTD

Date : 27-04-2021

Breif Issue :

FACTS AND ISSUE OF THE CASE:

The said petition has been filed by the petitioner challenging the instructions dated 22.05.2019, addressed by the respondent no. 4 the respondent no. 3, advising that all services, whether Engineering Services (Network Engineering Services, Management and Operation of Network Services (Managed Services) in Telecom Sector or Management Consulting Services) in Telecom Sector, are ineligible for the benefit under the Service Exports from India Scheme (hereinafter referred to as 'SEIS') announced by the Foreign Trade Policy 2015-20. The petition further impugns the order(s) dated 11.06.2019 and 03.06.2019, whereby the respondent no. 3 has rejected the claim of the petitioner(s) for benefit under the SEIS for the financial years 2015-16, 2016-17 and 2017-18, respectively.

Decision of Advance Ruling Authority :

DECISION:

The "Service Providers in Telecom Sector" meant and included only the Telecom Service Providers of services mentioned therein. The ambit and scope of such exclusion was not of Service Providers who render services to such Telecom Service Providers - Though, a similar list is not appended to FTP or HBPv1, there is no reason for a different interpretation to be placed to FTP 2015-20. Clearly, what was made ineligible for availing benefit of SEIS in terms of paragraph 3.09(2)(i) are the Telecom Service Providers and not the Service Providers who provide services to such Telecom Sector.

The Foreign Trade Policy is clear and unambiguous inasmuch as it excludes the Telecom Service Providers from the benefit of the SEIS and not the Service Providers who provide services to such Telecom Service Providers. No different intention regarding the same is discernible from the FTP 2015-20 - the 'Service Provider' is one who in terms of a license granted under Section 4 of the Indian Telegraph Act, 1885 provides Telecommunication

Services as defined under Section 2(k) of the TRAI Act. I see no reasons to interpret 'Service Providers in Telecom Sector' in the FTP differently.

Thus, exclusion of 'Service Providers in Telecom Sector' from benefit of SEIS is of a service provider providing telecom services. The Impugned Instructions dated 22.05.2019, therefore, sought to impose fresh restrictions on the eligibility of the service providers entitled to the benefit under SEIS, which amounted to amendment in the policy, and is therefore, ultra vires the Foreign Trade Policy - there is no ambiguity in the FTP on the scope of exclusion from SEIS benefit thereof, even if one is to hold otherwise, the above principles would apply and the interpretation sought to be placed by the respondent on the said provision cannot be sustained.

As far as the remedy under Section 16 of the Act is concerned, once it is held that the Impugned Orders have been passed on basis of Instructions which are otherwise ultra vires the Act, the petitioner cannot be denied the benefit of an original adjudication on merits and the decision on an appeal under Section 15 of the Act in accordance with law, and be relegated only to a remedy of review.

The respondents are directed to consider the claims of the petitioner(s) under the SEIS afresh and in accordance with FTP 2015-20 - Petition allowed.