IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.8655 of 2009
and
M.P. Nos.2 & 3 of 2009

M/s. SSPDL Limited
Rep. by its Vice President (Finance)
Challa Mall, 11, Sir Thiyagaraya Road
T. Nagar, Chennai 600 017 ...Petitioner

Vs.

1. The Union of India
Rep by the Secretary to Government
Ministry of Finance
Income Tax Department
New Delhi 110 001.

2. The Secretary to Government
Ministry of Commerce and Industry
Department of Industrial Policy & Promotion
Secretariat for Industrial Assistance (SIA)
Udhyog Bhavan, New Delhi 110 001.

3. The Union of India,
Rep. by the Secretary to Government
Ministry of Finance,
Department of Revenue,
New Delhi 110 001.

4. The Central Board of Direct Taxes,
Rep by the Secretary
Department of Revenue
Ministry of Finance, New Delhi.

5. The Empowered Committee under the
Industrial Park Scheme, 2002
Rep. by its Member Secretary/Joint Secretary
Department of Industrial Policy and Promotion
Secretariat for Industrial Assistance (SIA)
Udhyog Bhavan,
New Delhi 110 001. ...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of certirarified Mandamus to call for records of the second respondent in its letter dated 15.01.2009 under Letter No.15/3/2007-ID-II and quash the same as illegal and contrary to the provisions contained in the Income Tax Act, 1961 and Industrial Park Scheme, 2002 and consequently directing the second respondent to place the petitioner's application dated 08.01.2007 before the fifth respondent committee and to consider and accord approval in terms of the provisions contained in the Industrial Park Scheme, 2002.

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| For Petitioner | : | Mr.Subhang Nair<br>For Mr. R. Parthasarathy |
| For R1, R3 and R4 | : | Mr. A.P. Srinivas<br>Senior Standing Counsel for IT and<br>Mr. A.N.R.Jayaprathap |
| For R2 & R5 | : | No appearance. |

ORDER

The writ on hand is filed to call for the records of the 2nd respondent in its letter dated 15.01.2009 under letter No.15/3/2007-ID-II and quash the same and direct the 2nd respondent to place the petitioner's application dated 08.01.2007 before the 5th respondent/ Empowered Committee for consideration and approval in terms of the provisions of the Industrial Park Scheme 2002.

2. The learned Senior Counsel appearing on behalf of the petitioner mainly contended that the scheme called "Industrial Park Scheme 2002" was introduced and notified by the Ministry of Commerce and Industry Department of Industrial Policy & Promotion and as per the said scheme, the period of operation of the scheme was notified as from 01.04.1997 and ending on 31.03.2006. Admittedly, the petitioner company submitted its application under the scheme dated 01.04.2002 on 08.01.2007. The said application was returned through the impugned order by stating that the period mentioned in the scheme had expired and therefore, the petitioner has to submit a fresh application under the new scheme of the year 2008. The learned Senior Counsel reiterated that it is not a new scheme which was introduced in the year 2008. The scheme was introduced on 01.04.2002 and was extended and therefore, the application filed by the petitioner on 08.01.2007 is to be treated as an application submitted under the first scheme. This apart, on 08.01.2007, the second scheme did not come into force. The scheme itself was notified on 08.01.2008. In view of the fact

that the scheme was notified on 08.01.2008, the application submitted by the petitioner on 08.01.2007 is to be treated as submitted under the first scheme of the year 2002 for all purpose and that the application is to be considered by the Empowered Committee constituted on merits by providing an opportunity to the writ petitioner. In view of the fact that the application is returned merely on the ground that the petitioner is eligible to submit a fresh application under the subsequent scheme dated 08.01.2008, the petitioner is constrained to move the present writ petition.

3. The learned Senior Standing Counsel appearing on behalf of the respondents opposed to the contention raised on behalf of the petitioner by stating that the scheme, namely, Industrial Park Scheme 2002, was notified on 01.04.2002 by the Ministry of Commerce and Industries. No doubt, the petitioner submitted the application on 08.01.2007. As per the scheme dated 01.04.2002, the period of operation of the said scheme was from 01.04.1997 to 31.03.2006. Therefore, the application submitted by the petitioner on 08.01.2007 was not entertained under the scheme dated 01.04.2002.

4. Further it is contended on behalf of the respondents that the second scheme was notified on 08.01.2008. The said scheme was notified by the Ministry of Finance, Department of Revenue (Central Board of direct Tax). Under the said Scheme, the date of commencement of the Industrial Park should be on or after 01.04.2006 and not later than 31.03.2009.

5. The learned Senior Standing counsel contended that in respect of the Industrial Park, which commenced in between 01.04.2006 and 31.03.2009, the same is eligible to get the benefit under the scheme dated 08.01.2008. Under these circumstances, the application submitted by the writ petitioner on 08.01.2007 was returned with an opportunity to file a fresh application under the subsequent scheme dated 08.01.2008. Thus, the application submitted by the petitioner was not considered on merits, but it was returned on the ground that the application under the scheme dated 01.04.2002 was submitted after the expiry of the scheme and therefore, there is no infirmity or perversity as such.

6. Considering the arguments as advanced by the learned Senior Counsel on behalf of the petitioner and the learned Senior Standing Counsel for the respondents, this Court is of the considered opinion that admittedly, the petitioner submitted the application on 08.01.2007. Clause 3 of the scheme dated 01.04.2002 states that "scheme shall be applicable for any undertaking which develops, develops and operates or maintains and operates an Industrial park for the period beginning on

April 1, 1997 and ending on March 31, 2006". Thus applicability of the scheme is made clear that any undertaking which develops, develops and operates or maintains and operates an Industrial park for the period beginning from 01.04.1997 and ending on 31,03.2006, is entitled to avail the benefit of the scheme. However, in the present case, the petitioner submitted the application on 08.01.2007, which is beyond the period of applicability of the scheme.

7. The next sequence would be that the second notification was issued by the Ministry of Finance, Department of Revenue on 08.01.2008. The said scheme would reveal that the "date of commencement of the Industrial park should be on or after 01.04.2006 and not later than 31.03.2009". The said scheme dated 08.01.2008 was intended to grant benefit in respect of the commencement of Industrial Park in between 01.04.2006 and 31.03.2009. Even presuming that the effect of commencement begins from the last date of expiry of the first scheme, the application submitted by the petitioner on 08.01.2007 to consider the same under the first scheme, falls under the second scheme. Perusal of the scheme would reveal that though the second scheme was notified on 08.01.2008, the benefit was extended in respect of the Industrial parks commenced on or after 01.04.2006 and before 31.03.2009. Therefore, if at all the commercial park commenced in between 01.04.2006 and 31.03.2009, such cases are to be considered under the scheme dated 08.01.2008.

8. The third sequence would be that even with reference to the application submitted on 08.01.2007 by the petitioner, undoubtedly, the date of scheme expired on 31.03.2006. Clause 3 states that the scheme shall be applicable for any undertaking for the period beginning from 01.04.1997 to 31.03.2006. In view of the fact that the application itself was submitted beyond the period of applicability, then it is necessarily to be considered under the second scheme notified on 08.01.2008. The impugned order shows that the authorities have not adjudicated the application submitted by the writ petitioner on merits. They have not stated about any ineligibility of the writ petitioner. The only ground on which the application was returned is that the application submitted on 08.01.2007 was not covered under the first scheme and an opportunity was granted to the petitioner to submit an application under the subsequent scheme dated 08.01.2008.

9. This being the factum established, this court is of the considered opinion that the petitioner is entitled for an opportunity to submit the application under the second scheme dated 08.01.2008 and in the present case, even though the petitioner was granted such an opportunity, the petitioner has

not resubmitted any application so as to avail the benefit of the scheme notified on 08.01.2008. Thus, the claim of the petitioner to treat its application dated 08.01.2007 under the first scheme dated 01.04.2002, is not in consonance with the terms and conditions stipulated regarding the applicability of the said scheme. Regarding the opportunity to be provided to the writ petitioner, this Court is of the opinion that the application was not adjudicated on merits. The application was merely returned on the ground that it is not falling within the date of applicability and therefore, the contention in this regard deserves no merit and consideration. Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Union of India
Rep by the Secretary to Government
Ministry of Finance
Income Tax Department
New Delhi 110 001.

2. The Secretary to Government
Ministry of Commerce and Industry
Department of Industrial Policy & Promotion
Secretariat for Industrial Assistance (SIA)
Udhyog Bhavan, New Delhi 110 001.

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5. The Empowered Committee under the
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Secretariat for Industrial Assistance (SIA)
Udhyog Bhavan, New Delhi 110 001.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.37031/2021

W.P.No.8655 of 2009

AK(CO)
RGA(01/09/2021)