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W.P.Nos.3060, 3061, 3062, 3063 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2022

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Writ Petition Nos.3060, 3061, 3062 & 3063 of 2012

and

M.P.Nos. 1, 1, 1 and 1 of 2012

M/S.Prince Foundations Private Limited,
Rep. by its Director and Authorized Signatory,
Mr. Sharad Vasanthi,
Having its Office at
No.59 Ormes Road,
Kilpauk, Chennai-600 010

... Petitioner in all W.Ps.

-Vs-

1. The Secretary,
Ministry of Commerce and Industry,
(Dept. of Industrial Policy and Promotion),
Government of India, New Delhi.
2. The Secretary,
Ministry of Law and Justice, New Delhi
3. The Director,
The Industries Commissioner and
Director of Industries And Commerce,
Chepauk, Chennai – 600 005.

... Respondents in all W.Ps.

Common Prayer in W.P.Nos.3060, 3062 & 3063 of 2012: Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of Writs of Certiorarified Mandamus, calling for the records of the 1st respondent in issuance of the letter dated 19th October 2011 and quash the same and



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thereby direct the 1st respondent to grant approval under Non-Automatic route as stipulated under Section 7 of the Industrial Park Scheme 2002 to the petitioner.

Prayer in W.P.No.3061 of 2012 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in issuance of the letter dated 30th April 2009 and quash the same and thereby direct the 1st respondent to grant approval under Non-Automatic route as stipulated under Section 7 of the Industrial Park Scheme 2002 to the petitioner.

For Petitioner in all W.Ps. : Mr.P.Elango

For Respondents in all W.Ps.: Mr.K.Gunasekar, SPCCG

COMMON ORDER

In these writ petitions, the petitioner Company has challenged the impugned communications dated 19.10.2011 (in Writ Petition Nos. 3060, 3062 & 3063 of 2012), and 30.04.2009 (in Writ Petition No.3061 of 2012), of the first respondent. By the impugned communications, the first respondent has rejected the applications filed by the Petitioner for approval under the Industrial Park Scheme, 2002 issued by the Central Government for the purpose of Section 80IA of the Income Tax Act, 1961, issued by the Government of India, Ministry of Commerce and Industry, (Department of Industrial Policy and



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Promotion) in the exercise of the powers conferred under Clause (iii) of sub-section (4) of Section 80-IA of the Income Tax Act, 1961. The petitioner company had filed applications under the aforesaid Scheme for four different projects in the following places:

Details of Projects

<i>S.No.</i>	<i>W.P. No.</i>	<i>Location</i>	<i>Date of Application to CMDA</i>	<i>Date of CMDA Approval</i>	<i>Date of commencement of construction *</i>	<i>Proposed date of completion as per Application *</i>	<i>Date of Application under the Scheme</i>	<i>Date of Rejection of Application</i>
1	3060/2012	Okkiam Throaipakkam	10.10.2005	14.06.2007	Nov. 2005	Jan.2006	24.10.2006	19.10.2011
2	3061/2012	Kottivakkam	27.11.2006	08.05.2009	Dec. 2006	March 2008	28.03.2007	30.04.2009
3	3062/2012	Ambattur	29.11.2004	12.12.2006	Dec. 2004	March 2006	15.09.2006	19.10.2011
4	3063/2012	Kandanchavadi	10.11.2003	29.04.2005	Nov. 2003	March 2006	24.10.2006	19.10.2011

[* Date as per the averments in the affidavits filed in support of the Writ Petition and in the applications filed under the scheme]

2. The applications filed by the petitioner, insofar as the petitioner in W.P.No.3060, 3062 and 3063 of 2012 read identically. The only reason given in the three impugned communications is that the applications under the scheme were filed after 30.04.2006 and therefore, the applications were not covered under the aforesaid Scheme. The relevant portion of the impugned order dated 19.10.2011, in these three writ petitions read identical and are reproduced below:



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For W.P.No.3060 of 2012:

Subject: Application under Industrial Park Scheme-2002-reg.

Sir,

Kindly refer to your application dated 24th October, 2006 on the subject mentioned above. Industrial Park Scheme, 2002 is applicable to any undertaking which develops, develops and operates or maintains and operates an Industrial Park for the period beginning on the 1st day of April, 1997 and ending on the 31st March, 2006. Therefore, it has been decided in consultation with Ministry of Law and Justice, Department of Legal Affairs and Central Board of Direct Taxes that application received on or before 30.04.2006 are eligible for consideration under Industrial Park Scheme, 2002 provided date of commencement of the Park (as defined in the Scheme) in prior to 31.03.2006.

2. Since your undertaking does not fulfill the condition mentioned above, your application is returned herewith.

3. You are advised to apply to the appropriate authority if you, so desire, under Industrial Park Scheme, 2008 notified by the Department of Revenue (CBDT) vide Notification No.S.O.50(E) dated 8th January, 2008 and subsequently amended vide Notification No.S.O.1605(E) dated 2nd July, 2008, which applies to the Industrial Park Scheme developed on or after 01.04.2006.

Yours faithfully.

For W.P.No.3062 of 2012:

Subject: Application under Industrial Park Scheme-2002-reg.



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Sir,

Kindly refer to you application dated 15th September, 2006 on the subject mentioned above. Industrial Park Scheme, 2002 is applicable to any undertaking which develops, develops and operates or maintains and operates an Industrial Park for the period beginning on the 1st day of April, 1997 and ending on the 31st March, 2006. Therefore, it has been decided in consultation with Ministry of Law and Justice, Department of Legal Affairs and Central Board of Direct Taxes that application received on or before 30.04.2006 are eligible for consideration under Industrial Park Scheme, 2002 provided date of commencement of the Park (as defined in the Scheme) in prior to 31.03.2006.

2. Since your undertaking does not fulfill the condition mentioned above, your application is returned herewith.

3. You are advised to apply to the appropriate authority if you, so desire, under Industrial Park Scheme, 2008 notified by the Department of Revenue (CBDT) vide Notification No.S.O.50(E) dated 8th January, 2008 and subsequently amended vide Notification No.S.O.1605(E) dated 2nd July, 2008, which applies to the Industrial Park Scheme developed on or after 01.04.2006.

Yours faithfully.

For W.P.No.3063 of 2012:

Subject: Application under Industrial Park Scheme-2002-reg.

Sir,

Kindly refer to you application dated 24th October, 2006 on the subject mentioned above. Industrial Park Scheme, 2002 is applicable to any undertaking which develops, develops and



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operates or maintains and operates an Industrial Park for the period beginning on the 1st day of April, 1997 and ending on the 31st March, 2006. Therefore, it has been decided in consultation with Ministry of Law and Justice, Department of Legal Affairs and Central Board of Direct Taxes that application received on or before 30.04.2006 are eligible for consideration under Industrial Park Scheme, 2002 provided date of commencement of the Park (as defined in the Scheme) in prior to 31.03.2006.

2. Since your undertaking does not fulfill the condition mentioned above, your application is returned herewith.

3. You are advised to apply to the appropriate authority if you, so desire, under Industrial Park Scheme, 2008 notified by the Department of Revenue (CBDT) vide Notification No.S.O.50(E) dated 8th January, 2008 and subsequently amended vide Notification No.S.O.1605(E) dated 2nd July, 2008, which applies to the Industrial Park Scheme developed on or after 01.04.2006.

Yours faithfully.

3. As far as the rejection of the applications filed for Kottivakkam project on 28.03.2007 is concerned, the reasons given in the impugned order, are as under (in W.P.No.3061 of 2012):

1. The Industrial Park Scheme, 2002 which was being administered by this Department ended on 31.03.2006. This Department initiated the process for notification of the new scheme in consultation with the CBDT well in advance.



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Finally, on 08.01.2008, the CBDT notified the Industrial Park Scheme, 2008 applicable to the Park set up on or after 01-04-2006 but not later than 31.03.2009.

- 2. This Department continued to receive applications during the interim period from 01.04.2006 till 07.01.2008 for the parks set up on or after 01.04.2006. Upon the notification issued by the CBDT on 08.01.2008, this Department has returned the applications so that the same could be applied under the new scheme.*
- 3. Since this Department does not have the mandate and the administering agency for the applications relating to the Parks set up on or after 01.04.2006 in CBDT, this Department has returned all the applications where the date of commencement of the Industrial Park is after 31.03.2006.*
- 4. since your application is not covered under 2002 Scheme notified by this Department, various issues raised in your letter such as placing the case before the Empowered Committee, offering opportunity to the party of a hearing before the Committee, the time limit for rejection of the application, etc. are not relevant in this case. It is relevant to make it very clear here that this is not a case of rejection of your application but the same was returned advising you to apply to the appropriate authority under Industrial Park Scheme, 2008 since the application is not covered under the Industrial Park Scheme, 2002.*

4. The challenge to the impugned orders, is primarily on the ground that the reasons given in the impugned orders that the applications were beyond the



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limitation under the Scheme of the year 2011, cannot be countenanced, particularly, in the light of the fact that the applications of the petitioner dated 24.10.2006, 15.09.2006 and 24.10.2006 in W.P.Nos. 3060, 3062 and 3063 of 2012 respectively, were considered even on 18.09.2008 and the issue was deferred only on the ground that there was a doubt as to whether the application filed by the Companies not owning the land, were developers or not, and the issue therefore was deferred and thus the applications filed were impliedly in time and therefore, the impugned orders cannot be sustained stating that the applications were time barred.

5. Though the learned counsel for the petitioner has taken similar ground in WP.No.3061 of 2012, it is noticed that the application of the petitioner insofar as the Kottivakkam Project is concerned, it was rejected on 30.04.2009. The petitioner was asked to re-submit the application under the revised Industrial Park Scheme of 2008 dated 08.01.2008.

6. The learned counsel for the petitioner has relied on the decision of the Division Bench of the Bombay High Court in ***“Silver Land Developers Pvt.Ltd., and others Versus Empowered Committee and others”***. Specific reference was made in Para Nos.21 and 24 from the said decision.



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7. Learned Standing counsel for the respondent, submitted that these writ petitions are without merits as the applications are beyond time and therefore, impugned orders are liable to be sustained. It is submitted that the impugned communications were well-reasoned and require no further interference in the hands of this Court.

8. The learned Standing Counsel for the respondent has relied on the decision of the learned Single Judge of this Court, in the case of ***“SSPDL Limited Vs. Union of India and others”*** in W.P.No.8655 of 2009, order dated 29.07.2021.

9. I have considered the arguments advanced by the learned counsel for the petitioner and respondents, and perused the impugned communication, relevant portion of which have been extracted above and also perused the decision of the Bombay High Court in ***“Silver Land Developers Pvt.Ltd., and others Versus Empowered Committee and others”*** and also the decision of the learned Single Judge of this Court, in the case of ***“SSPDL Limited Vs. Union of India and others”*** in W.P.No.8655 of 2009 order dated 29.07.2021,



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dismissed the Writ Petition. Rejection of the applications of the petitioner belatedly in the year 2011, without giving an opportunity of being heard, cannot be sustained, as it is contrary to para 7 of the Industrial Park Scheme, 2002. Therefore, the impugned communication in WP.No.3060, 3062 and 3063 of 2012, are liable to be quashed.

10. Though the petitioner appears to have filed the applications after 31.03.2006, nevertheless, the applications were considered and they were deferred only on the ground that the petitioner Company was not the owner of the property and that the Projects were developed under the joint development arrangement.

11. Considering the above observations, I am of the view that the stand taken in the impugned orders stating that the applications were time barred, cannot be sustained. If it was time barred, the applications should have been rejected then and there. On the other hand, the facts on record indicate that the applications were under active consideration. Even in the meeting of the Empowered Committee held on 18.09.2008, there was no indication that the application were time barred. However, the facts are not clear as to the exact date, when the petitioner commenced the construction. These are issues which



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will have to be decided by the respondents. The Petitioner Company was also not given an opportunity to explain the same.

12. Therefore, I am of the view that the impugned order in W.P.Nos. 3060, 3062 and 3063 of 2012 deserves to be quashed and the matter has to be remitted back to the respondent to reconsider the application of the petitioner and dispose of the same on merits and in accordance with law. This exercise shall be carried out by the first respondent within a period of three months from the date of receipt of a copy of this order. Needless to state, that as is contemplated in para 7 of the Industrial Park Scheme, 2002, petitioner Company shall be heard before any adverse orders are passed against them.

13. As far as WP.No. 3061 of 2012 is concerned, the application was not only time-barred but also was returned to the petitioner and respondents have given an opportunity of hearing to the petitioner to apply for the 2008 scheme, which had partiality altered the 2002 scheme. There is no merits in this writ petition. Therefore, I am inclined to dismiss WP.No. 3061 of 2012.

14. In the result WP.No.3060, 3062 and 3063 of 2012 are partly allowed by way of remand. The first respondent shall pass orders on merits



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and in accordance with law as directed above.

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15. As far as 3061 of 2012 is concerned, it is dismissed.

16. No costs. Consequently connected miscellaneous petitions are closed.

24.06.2022

Index: Yes/No

Speaking order: Yes/No

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To

1. The Secretary,
Ministry of Commerce and Industry,
(Dept. of Industrial Policy and Promotion),
Government of India, New Delhi.
2. The Secretary,
Ministry of Law and Justice, New Delhi
3. The Director,
The Industries Commissioner and
Director of Industries And Commerce,
Chepauk, Chennai – 600 005.



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C.SARAVANAN, J.

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and
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