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**(2008) 02 P&H CK 0248**  
**In the Punjab And Haryana At Chandigarh**

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|------------------------------------|----|------------|
| Electronics Systems Punjab Limited | Vs | APPELLANT  |
| State of Punjab and Others         |    | RESPONDENT |

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**Date of Decision :** 11-02-2008

**Acts Referred:**

Constitution of India, 1950 — Article 226

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 17, 20, 22, 25

**Citation :** (2008) 144 CompCas 734 : (2008) 14 VST 593

**Hon'ble Judges :** Satish Kumar Mittal, J;Rakesh Kumar Garg, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Rakesh Kumar Garg, J.—The petitioner has filed this petition under article 226 of the Constitution of India for issuance of a writ in the nature of certiorari quashing annexure P7 and further for issuance of a writ in the nature of mandamus directing respondent No. 3 to defer recovery proceedings for recovery of old arrears and to grant such other relief as is deemed to be just and proper in the facts and circumstances of the case.

2. The petitioner is a State Government Enterprise, wholly owned subsidiary of the Punjab State Industrial Development Corporation. The petitioner-company was incorporated in October 1980 and is engaged in the business of developing, manufacturing and supplying mini micro computer systems for different applications. The company commenced its commercial production in the year 1983. Till the year 1990, the company was earning huge profits:

3. However, with the entry of foreign MNCs, there was an adverse impact on the financial health of the petitioner-company which resulted in the petitioner's company suffering huge losses and in the financial year June 30, 1997, the petitioner's company net worth had fully eroded with its accumulated losses amounting to Rs. 23.76 crores. The petitioner-company filed a reference u/s 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 and the said reference was registered as BIFR case No. 605 of 1998. The Board for

Industrial and Financial Reconstruction on May 31, 1999 after taking into consideration the submissions of the concerned authorities declared the petitioner's company as a sick industrial company in terms of Section 3(1)(o) of the SICA Act and appointed SBI as the operating agency in terms of Section 17(3) of the SICA Act to formulate the rehabilitation scheme. However, vide its order dated May 24, 2004 the BIFR held that the petitioner-company is not likely to make its net worth exceed its accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof is not likely to become viable in future, and hence, that it is just equitable and in public interest that it should be wound up u/s 20(1) of the Act.

4. It is relevant to mention at this stage that in the mean time the petitioner-company had incurred huge liabilities towards the authorities under the Punjab General Sales Tax Act, 1948 and the Central Sales Tax Act, 1956 and the said tax was not paid by the petitioner-company to the department. After the order of the BIFR vide which the petitioner-company was ordered to be wound up, the Excise and Taxation Officer, Mohali (respondent No. 3) vide his letter dated June 9, 2004 directed the petitioner-company to deposit the arrears of its tax liability in his office up to June 25, 2004.

5. By way of this writ petition, the petitioner has approached this Court challenging the said demand of tax by the respondent-authority on the ground that the order dated May 24, 2004 passed by the BIFR has been challenged by the employees of the petitioner-company before the AAIFR by filing an appeal and till such time the appeal filed by the employees of the petitioner-company is not decided, it is not open to the respondent-authorities to initiate proceedings to recover old arrears in view of Section 22 of the SICA Act. It has been further prayed in the writ petition that a direction be issued to respondent No. 3 to defer the proceedings for recovery of old arrears in terms of order annexures P6 and P7 during the pendency of the appeal before the AAIFR.

6. The writ petition has been contested by the respondents, State of Punjab, raising the preliminary objections that the petitioner cannot claim protection of Section 22 of the SICA Act, 1985 as no proceedings as envisaged u/s 22 of the said Act are subsisting. The writ petition has also been contested on the ground that the petitioner-company has failed to avail the effective and efficacious remedy by way of appeal against the order, annexures P6 and P7, as provided under the provisions of the Punjab General Sales Tax Act, 1948 and the Central Sales Tax Act, 1956 and therefore, the company has no locus standi to ask for issuance of a writ in the nature of certiorari to quash annexure P7. It has been further stated that the demand of tax has been raised by the respondent-department legally and in accordance with law.

7. We have heard learned Counsel for the parties and perused the record.

8. Mr. B. S. Walia, learned Counsel for the petitioner, has vehemently argued that an appeal u/s 25 of the SICA Act is pending before the AAIFR and therefore, in

view of Section 22 of the SICA Act when an appeal is pending proceedings for the winding up of the industrial company or for execution or the like against any of the properties of the industrial petitioner-company shall not lie or be proceeded with except with the consent of the AAIFR.

9. During the course of arguments it has been admitted by the counsel for the petitioner that while passing the order dated May 24, 2004 the BIFR has sent its opinion to this Court u/s 20(1) of the SICA Act for winding up of the petitioner-company and the matter is pending before the company judge. However, no hearing has taken place so far.

10. Be that as it may, in view of this fact alone we are not inclined to invoke the writ jurisdiction of this Court for the relief prayed, as the company judge/court is already seized of the matter and the petitioner may seek any of the relief there. Even otherwise, admittedly an appeal u/s 25 of the SICA Act is pending before the AAIFR and the said appellate authority is competent to grant the necessary relief to the petitioner.

11. In view of this, the present writ petition is dismissed with liberty to the petitioner to approach the appropriate forum to avail an alternative remedy available to him under law.