
(2016) 01 MP CK 0034
In the Madhya Pradesh High Court
Case No : W.P. No. 7508 of 2015

Indofil Chemicals Company	Vs	APPELLANT
State of M.P. and Others		RESPONDENT

Date of Decision : 13-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 1 MPLJ 666

Hon'ble Judges : P.K. Jaiswal and J.K. Jain, JJ.

Bench : Division Bench

Advocate : Umesh Gajankush, for the Appellant; Pushyamitra Bhargava, Dy. Advocate General, for the Respondent

Final Decision : Partly Allowed

Judgement

1. By filing this writ petition under Article 226, petitioner is praying for issuance of writ of prohibition restraining the respondents from taking coercive action in pursuance to notice dated 23-10-2012 and orders dated 18-12-2013, 26-8-2015 passed by the Appellate Tribunal. The sole contention of learned counsel for the petitioner is that against the original assessment, second appeal is pending before the M.P. Commercial Tax, Appellate Board, Bhopal and the Appellate Board has granted stay, staying the recovery of the balance amount of assessment amounting to Rs. 21,77,014/- till Second Appeal No. a-03/IND/13 is decided. He submits that the assessment proceedings has not attained the finality and in view of the consistent view of Principal Seat of this Court in the case of Laxhman Das Gunamal vs. State of M.P. and others, (2014) 24 STJ 324 (M.P.) and in the case of Govind Traders vs. State of M.P. and others, (2015) 26 STJ 298 (M.P.), the penalty proceedings is not permissible. Paras 3 and 4 of the order passed in the case of Laxhman Das Gunamal (supra) reads as under:--

"3. The principal grievance made in this petition is that in spite of the fact that Second Appeal filed by the petitioner against the assessment order was pending, the Authority hastened to impose penalty which, however, could be done only

after the assessment order had attained finality. So long as the Second Appeal is pending, in law, the assessment order has not attained finality. Therefore, the Authority could not have hastened the penalty proceedings or take precipitative action on that basis.

4. In the circumstances, this petition is disposed of with a direction to the concerned Authority not to precipitate the penalty proceedings till the Second Appeal preferred by the petitioner is decided one way or the other. We also direct the Appellate Authority to decide the second appeal expeditiously and preferably within four weeks from today, on the assurance given by the petitioner through counsel that he will remain present in the office of the Appellate Authority on 15-1-2014 at 11.00 A.M., on which date the Appellate Authority will proceed with the hearing of the appeal or assign some suitable date to ensure that the same is disposed of within four weeks from today. The petitioner also assures through counsel that he will extend full cooperation for early disposal of the appeal."

2. For these reasons, this writ petition is disposed of with a direction to the concerned authority not to precipitate the penalty proceedings till the Second Appeal preferred by the petitioner is decided one way or the other. We also direct the Appellate Authority to decide the second appeal expeditiously preferably within four weeks from today, on the assurance given by the petitioner through counsel that he will remain present in the office of the Appellate Authority on 8-2-2016 at 11.00 a.m., on which date the Appellate Authority will proceed with the hearing of the appeal or assign some suitable date to ensure that the same is disposed of within four weeks from today. The petitioner also assures through counsel that he will extend full cooperation for early disposal of the appeal. With the aforesaid, this W.P. No. 7508/2015 is allowed in part to the extent indicated above without any order as to costs.