(2001) 09 GUJ CK 0031

In the Gujarat High Court

Case No : Special Civil Application No. 1055 of 2001

Kanoria Dyechem Ltd. APPELLANT

Vs

Sales Tax Officer and Another RESPONDENT

Date of Decision : 03-09-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22

Citation : (2002) 108 CompCas 620

Hon'ble Judges : M.S. Shah, J;D.A. Mehta, J

Bench : Division Bench

Advocate : K.H. Kaji and Manish K. Kaji, for the Appellant; U.R. Bhatt, Assistant Government Pleader, for the Respondent

Judgement

M.S. Shah, J.—In this petition under Article 226 of the Constitution, the petitioner is challenging the coercive recovery of sales tax dues by the respondent-authorities, on the ground that in view of the pendency of the petitioner company''s reference under the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "SICA" for short), the respondents cannot make any coercive recovery.

2. In response to the notice, on behalf of the respondents, affidavit-in-reply has been filed contending that when the petitioner is recovering sales tax from its customers there is no reason why the petitioner should be granted protection against the coercive recovery. In rejoinder, Mr. Kaji for the petitioner points out that as per the minutes of the proceedings drawn by the BIFR for the hearing held on January 3, 2001, cut-off date for crystallization of the dues of the company is fixed as June 30, 2001, and therefore, the petitioner cannot be required to pay up sales tax for the period prior to June 30, 2001.

3. Having heard Mr. Kaji, learned counsel for the petitioner and Mr. U.R. Bhatt, learned Assistant Government Pleader for the respondents, we find that in view of the provision of Section 22 of the SICA Act and aforesaid proceedings before

the BIFR, it will be just and proper to dispose of the petition with a direction that the respondents shall not make any recovery of the sales tax dues of the petitioner-company for the period till June 30, 2001, except in accordance with such scheme for revival and rehabilitation as may be framed by the BIFR or after obtaining prior approval of the BIFR subject to the condition that the petitioner-company pays its sales tax dues for the period from July 1, 2001, onwards regularly and in accordance with law. Mr. Kaji states that the petitioner has already paid sales tax for the period from July 1, 2001, to July 31, 2001, and that for the subsequent period the petitioner-company shall pay the same in accordance with law.

4. In view of the aforesaid statement and discussion, we partly allow the petition quashing and setting aside the impugned notice dated January 11, 2001, and January 19, 2001 (annexure "B" collectively) restraining the respondents from recovering the sales tax from the petitioner for the period prior to June 30, 2001, except in accordance with the BIFR scheme and except with the prior permission of the BIFR. We further direct the petitioner-company to inform the respondent-authorities about the progress and/or failure of the scheme before the BIFR and the final outcome of the proceedings before the BIFR as and when they stand concluded before the BIFR.

5. The respondent authorities shall also issue Forms Nos. "C", "H" and "19" to the petitioner-company in accordance with law after proceeding on the basis that no coercive recovery is to be made from the petitioner-company for the sales tax dues for the period prior to June 30, 2001, as per the aforesaid directions. The petition stands disposed of accordingly. Rule is made absolute to the aforesaid extent only with no order as to costs.

The petition disposed of accordingly.

