(2002) 10 MP CK 0070

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2866 of 2002

Niket Udyog Ltd. APPELLANT

Vs

Commercial Tax Officer RESPONDENT

Date of Decision : 10-10-2002

Acts Referred:

Madhya Pradesh Commercial Tax Act, 1994 — Section 32(10)
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22

Citation : (2003) 2 MPLJ 297 : (2004) 52 SCL 211

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : H.S. Srivastava, for the Appellant; R.S. Jha, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

Petitioner is declared to be a sick industrial company u/s 31 of SICA [Sick Industrial Companies (Special Provisions) Act, 1985] (hereinafter referred to as ''the Act'') on 9-5-2000. Respondent Nos. 1 to 3 have initiated the proceedings for recovery of sales tax in spite of the directions issued by the State Government as per order P. 3 dated 22-11-2001. The recovery has been initiated as per orders P. 5, P. 6, P. 7, P. 8 and P. 10 which are assailed by the petitioner in this writ petition.

Petitioner is a public limited company registered under the Companies Act, 1956. Petitioner became sick industrial company and was so declared by Board for Industrial and Financial Reconstruction (BIFR) as per order P. 1 dated 9-5-2000. Petitioner submitted rehabilitation package along with various relief and concessions proposed is under examination of the operating agency appointed by BIFR as well as the Government of M.P., the Department of Commerce and Industries. The fact of petitioner becoming a sick industrial company was brought to the notice of the Commercial Tax Officer vide reply dated 22-10-2001.

Petitioner submits that State Government, Department of Commerce and Industries issued memo No. F-15-21/99/IIR.3 dated 22-11-2001 addressed to the Principal Secretary, Government of M.P., Commercial Tax Department to direct Commercial Tax Officer not to take recovery proceedings against the petitioner in view of the declaration of the company as sick by BIFR. Respondent No. 1 acting in the capacity of Tehsildar served demand notice on 14-12-2001 for payment of State and Central Tax. Petitioner submitted written reply P. 4 and letter P. 3 and requested not to proceed with the recovery distress or like action. Undeterred, respondent No. 1 in the capacity of respondent No. 2 attached the movable property gas cylinders on 2-3-2002 and 4-3-2002 as per P. 5. Attachment and restraint order P. 6 was also passed in respect of land, building, factory and machinery on 8-3-2002. Sale proclamation for safe of gas cylinders was issued on 8-3-2002 fixing the date of sale on 8-4-2002. Respondent also attached bank accounts vide order P. 8 No. 1212 dated 16-10-2001 and 1304 dated 25-10-2001. Petitioner objected to the coercive recovery by filing reply P. 9. Registration certificate of the petitioner has been cancelled as per order P. 10 dated 5-3-2002. Petitioner submits that action is illegal, arbitrary and in contravention of the directions issued by the BIFR as per P.1 and P.5 which has statutory force issued u/s 32(10)(a) of the M.P. Commercial Tax Act, 1994. The action of attachment of the Bank account, cancellation of certification without consent of the BIFR and denial of the declaration form is arbitrary, illegal and bad in law. The action is illegal, arbitrary and has been passed in ignorance of the legal position u/s 22(1) of the Act. Petitioner has been prohibited from doing the business. Thus purpose of rehabilitation being made by the operating agency as reflected in the communication P. 3 of the State Government.

In the return the respondents contend that Section 22 of the Act lays down that during the pendency of the application for declaring an industry to be sick industry and during the pendency of the preparation of the rehabilitation package no steps for distress sale or recovery of due be taken up against the concerned industry. In the instant case the provision of Section 22 of the Act is not applicable as rehabilitation package for petitioner industry is under preparation and as per the orders of the Board for Industrial and Financial Reconstruction dated 9-5-2000 the cut off date for crystallisation of the dues for the purpose of which rehabilitation package has to be prepared is 30-9-2000, therefore, all subsequent dues whatsoever after the said date 30-9-2000 are not the subject-matter of the proceedings under the Act. The present recovery towards the liability for payment of sales tax which has arisen after 30-9-2000 is not barred by provisions of the Act and can be legitimately recovered. The recovery towards sales tax is permissible in view of the Apex Court decision rendered in the case of Dy. CTO v. Corromandal Pharmaceuticals [1997] 14SCC 154, Kanoria Dyechem Ltd. v. STO [2002] 125 STC 210 (Guj.) and Circular Rule 2 issued by Commercial Tax Commissioner, M.P.

It is also contended by the respondents that petitioner submitted the return as per the provisions of Section 26 of the M.P. Commercial Tax Act. Section 32 is attracted. u/s 32 if the advance tax mentioned by him in the return is not paid in the period prescribed by Section 26 the same can be recovered as per the provisions of Section 32(6) of the M.P. Commercial Tax Act. The reliance as placed by the petitioner on letter P. 3 is misconceived. The said letter does not direct stay of recovery proceedings but is a simple letter of request to the Commercial Tax Department to direct the Commercial Tax Officer, Chhindwara to stay the proceedings of recovery and, therefore, does not confer any right on the petitioner to claim any relief on that basis. The recovery is in accordance with law. The writ petition is liable to be dismissed.

Shri H.S. Shrivastava, learned counsel for the petitioner, submits that the impact of the order P. 1 passed on 9-5-2000 by BIFR has been completely ignored. The action is in contravention of the directions issued by the State Government u/s 32(10)(a) of the Commercial Tax Act, 1994. It Was incumbent upon the Commercial Tax Department to consider the directions issued by the State Government which has the statutory force and only thereafter to proceed with the recovery. He submits that petitioner ought to have been afforded opportunity of making the deposit of sales tax dues in instalments. The purpose of rehabilitation stands frustrated. The IDBI has been appointed as operating agency. Petitioner has filed an application before the State Government for granting concession and facilities in order to rehabilitate and clear the dues.

Shri R.S. Jha, learned Dy. A.G. appearing for the respondents, contends that the directions issued by the State Government P. 3 is not an order but only a request made to the Commercial Tax Department as the recovery of the dues of sales tax is after the cut off date. The recovery of the sales tax dues is for the subsequent period and in the light of the decisions of the Apex Court referred to above. The action of the respondent Nos. 1 to 3 is proper. No interference is required to be made. Writ petition deserves dismissal.

The main question for consideration is whether the directions issued by the State Government as per P. 3 ought to have been taken into consideration by the Commercial Tax Department and initiation of the proceedings cancelling the registration thereby to restrain the petitioner from doing any business is in accordance with law. Bare reading of communication P. 3 dated 22-11-2001 indicates that since petitioner''s unit has been declared sick unit under the Act, is entitled for the various protection under the Act. The Commercial Tax Department has been requested as ''ordered'' that till the matter is pending before BIFR, no proceedings be initiated for recovery with respect to the sales tax dues and directions be issued in that regard to the Commercial Tax Officer, Chhindwara. This order is in the spirit of Section 32(10)(a) of the M.P. Commercial Tax Act, 1994. It read as under :

"(10)(a) Where the State Government after such enquiry as it may deem fit, is of the opinion that genuine hardship is being caused to a dealer or person due to any proceedings initiated for recovery of any amount of tax, interest or penalty or other dues outstanding against him, the State Government may, subject to such restrictions and conditions as may be prescribed, grant to the dealer or person additional time to pay such amount of tax or penalty or any other dues or may grant facility to pay such amount in instalments and pending the completion of such enquiry, the State Government may stay the recovery of the dues. In respect of every such facility the dealer or person shall be liable to pay interest at the rate specified in Sub-section (8) :

Provided that no such facility shall be granted to the dealer or person unless he has in the first instance applied in this behalf to the Commissioner under Sub-section (8)."

Bare reading of above quoted provisions makes it clear that it is open to the State Government in case any genuine hardship may be caused to the dealer or person due to any proceedings initiated for recovery of any amount of tax, interest or penalty or other dues outstanding against him, the State Government may, subject to such restrictions and conditions as may be prescribed, grant to the dealer or person additional time to pay such amount of tax or penalty. This provision is not to be restricted by Section 22 of the Act and gives wider power to the State Government to give additional relief to one which is contemplated by the provisions of Section 22 of the Act. Under this provision it is open to the State Government to stay any proceedings for recovery even after the cut off date fixed by BIFR. BIFR has fixed the date 30th September, 2000. It is open to the State Government to issue directions with respect to the subsequent recovery also as the word ''used'' is "any amount of tax" and this has not been clarified with reference to the ''cut off date mentioned by BIFR. Even otherwise, in any view of the matter as the direction has been issued by the State Government that has to be in the context of the rehabilitation step in terms of Section 32(10)(a) of the M.P. Commercial Tax Act, 1994. The recovery in question is clearly covered by the direction issued by the State Government which is binding on the Commercial Tax Department and ought to have been taken into consideration. If any further clarification was required by Commercial Tax Department it ought to have been sought from the State Government, Department of Commerce and Industries.

This communication P. 3 has not been taken into consideration at all by the respondent Nos. 1 to 3 while passing the orders of attachment P. 5, P. 6, P. 7 and P. 8 and while cancelling registration as per P. 10.

In this case as the communication P. 3 has been issued by the State Government it is not necessary to go into the question that whether it was necessary for the Commercial Tax Department to seek the permission of BIFR u/s 22.

In view of the aforesaid, the order of cancellation of registration P. 10 is quashed. The revision filed by the petitioner before the Commercial Tax Officer be considered in accordance With communication P. 3 issued by the State Government, Department of Commerce and Industries. Petitioner be allowed to work. Attachment of unit shall continue. No restraint to be put till the matter is decided afresh on doing the business as that defeats the intendment of order passed by the BIFR and the purpose of appointing the operating agency and issue of the directions P. 3 by the State Government. It is open to State Government to clarify P. 3.

Writ petition is allowed in terms of aforesaid directions. Costs on parties.

