(2015) 12 MP CK 0007

In the Madhya Pradesh High Court

Case No : W.P. No. 8625/2015

Pernod Richard India — APPELLANT

Vs

State of M.P. and Others — RESPONDENT

Date of Decision : 23-12-2015

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2015) 12 MP CK 0007

Hon'ble Judges : U.C. Maheshwari and S.K. Gupta, JJ.

Bench : Division Bench

Advocate : Pavan Dwivedi, Learned Counsel, for the Appellant; Vishal Mishra, Learned Deputy Advocate General, for the Respondent

Final Decision : Allowed

Judgement

1. Having heard on I.A. No. 8494/2015, an application on behalf of petitioner for urgent hearing of this petition during winter vacation.

2. For the reasons stated in it, the same is allowed.

3. Heard on the question of admission.

4. On behalf of the petitioner, this petition is preferred under Article 226 of the Constitution of India for issuing the appropriate writ against the authorities of the State for the following reliefs:-

"a. Issue a writ of certiorari or any other appropriate writ, order or direction in the nature of certiorari quashing the notice dated 19.09.2014 and notice dated 21.10.2015 (Annexure P-1 & P-8) as being without jurisdiction and premature; and/or in the alternatively.

b. Issue directions to the respondents to keep the proceedings in abeyance until a final word is pronounced in the matter on merits by the appellate authorities.

c. Any other relief/reliefs, which this Hon''ble Court deems fit and proper looking to the facts and circumstances of the case as may be granted in the interest of justice."

5. Petitioner''s counsel after taking us to the petition along with the annexed papers argued that in respect of the assessment order in dispute, at the instance of the petitioner second appeal is pending before the M.P. Commercial Tax Appellate Board and as per the settled preposition unless such appeal is decided and the order of the assessment gets finalized which is subject matter of the appeal, the penalty could neither be imposed nor recovered and in such premises, he prayed that in the available circumstances, during pendency of the second appeal, the impugned penalty proceedings be not carried out by the authority and prayed for admitting and allowing this petition.

6. In view of the aforesaid circumstances, it appears that a very short question is involved in this petition for adjudication that whether during pendency of the second appeal against the assessment order on the basis of assessment order any proceedings could be imposed and the penalty could be carried out. In such premises, we are of the considered view that unless the second appeal against the assessment order is finalized, the proceedings to impose the penalty could not be proceeded as observed by the Division Bench of the Principal Seat in the case of Laxhman Das Gunamal, Katni v. State of M.P. & Ors. reported in (2014) 24 STJ 324 (MP) but simultaneously we are also of the view that this petition could be disposed of by directing the appellate Board to hear and adjudicate the aforesaid second appeal with some observations so that the purpose of the petition may be served as decided by the Division bench of this Court in the aforesaid cited case.

7. In view of the aforesaid cited case, in the available circumstances, this petition is disposed of with a direction to the M.P. Commercial Tax Appellate Board to make an endeavor to hear and decide the aforesaid pending second appeal positively on or before 15th January, 2016 under intimation to this Court. Simultaneously, parties of this petition through their counsel are directed to fully cooperate with the appellate Board to hear and decide the aforesaid second appeal on or before the aforesaid cut off date. Pursuant to it, further proceedings of pending second appeal against the petitioner for imposition of penalty under Section 52 is hereby stated till 15th January, 2016.

8. Let a copy of this order be immediately sent to the Appellate Board.

9. Petitioner''s counsel is also directed to submit the certified copy of the order before the Appellate Board within five days from today.

10. Certified copy within two days.

