

(2004) 01 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 673 of 2003

Rom Industries Ltd.

APPELLANT

Vs

State of Jammu & Kashmir

RESPONDENT

Date of Decision : 30-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22

Citation : (2010) 3 JKJ 331

Hon'ble Judges : Sudesh Kumar Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Gupta, J.—Petitioner, M/s Rom Industries Limited, has preferred this petition seeking to quash the attachment order No.740-741

/DCR dated 13-06-2003 passed by respondent 3, by issuing a writ in the nature of certiorari and further commanding the respondents to open the

locks of the factory premises and allow the petitioner to run the Unit and earn livelihood. The case of the petitioner as disclosed in the petition is

that the withdrawal of the exemption to the petitioner- Company by the respondents has rendered his Company sick. The petitioner approached

the Board for Industrial and Financial Reconstruction (hereinafter for short referred to as ""the BIFR"") by making a reference under the provisions

of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter for short referred to as ""the SICA, 1985"") for declaring the Unit as

sick industrial Unit and taking steps for revival and rehabilitation of the Unit. The reference made by the petitioner-Company, however, came to be

rejected by the BIFR, against which appeal has been preferred before the

Appellate Authority for Industrial and Financial Reconstruction

(hereinafter for short referred to as "the AAIFR"). It is further stated that during the pendency of proceedings before the AAIFR, the respondents

assessed the petitioner for payment of sales tax on the basis of the returns filed in respect of the sale of its products. According to the petitioner,

the action of the respondents in raising demands and issuing recovery certificates in respect of the sales tax against the Petitioner-Unit and property

by way of attachment is in violation of the provisions of section 22(1) of the SICA, 1985. That it was well within the knowledge of the respondents

that appeal against the order of rejection of the reference of the Petitioner-Company is pending before the AAIFR when they initiated the process

of recovery by attachment of the property of the Unit and their action is, thus, illegal and unsustainable in law.

2. The specific stand of the respondents in their demurrer is that-after the reference made by the petitioner Company before the BIFR to declare

the Unit as sick industrial Unit has been rejected and there being no direction issued by the BIFR or the AAIFR restraining the respondents from

assessing the Unit for the purpose of sales tax, raising a demand and effecting the recovery by adopting coercive methods, the recovery of arrears

of sales tax by attachment of the Unit is in accordance with the provisions of the sales tax. It was further contended by the respondents that the

assessment has been based on the returns filed by the Petitioner-Firm, which has collected tax on the sale of its products. That the petitioner-

Company is under an obligation to deposit the tax, which it has collected on the sale of its products. It is further contended that the action of the

respondents by attachment of the property and recovery of sales tax is protected within the law.

3. I have heard the learned counsel appearing for the respective parties and considered their rival contentions in context with material placed on record.

4. It is not in dispute that the claim of the Petitioner-Company before the BIFR to be declared as sick industrial Unit has been rejected. Now the

question arises as to whether the action of the respondents in assessing the Petitioner-Company on the basis of returns filed showing the sale of its

products and the tax alleged to have been collected, by raising demands and is

suing recovery certificates and employing coercive methods for recovery of arrears of sales tax by attachment of the Unit, is protected u/s 22(1) of the SICA, 1985. Similar question came up for consideration in case entitled IDBI v. Surekha Coated Tubes and Sheets Ltd. reported in (1996) 85 Comp Cas 594 (Del.), wherein it was held that where a reference is made by the Company to the Board and the same is rejected and the Company goes in appeal to the Appellate Authority under this section against the rejection of the reference, it cannot contend that it falls within the ambit of the shelter provided in sub-section (1) of section 22.

5. The contention of Mr. Sunil Sethi, learned counsel appearing for the Petitioner, that in order to safeguard any such state of affairs, an embargo or bar is placed u/s 22 of the Act, is not attracted. It is well known fact that any proceeding before the BIFR take a long time to conclude and all the while the protective umbrella of section 22 is held over the company, which has reported sick. But this provision cannot be availed of by the petitioner as the reference before the BIFR to declare it as sick industrial Unit has been rejected. It is pertinent to point out that there is no dearth of cases where unfair advantage is sought to be taken of the provisions of section 22 by certain industrial companies and the wide language employed in the section is providing them a cover. Section 22 is not meant to breed dishonesty nor can it be so operated as to encourage unfair practices. The ultimate prejudice to the public monies should not be overlooked in the process of promoting industrial progress. This clearly shows that the liability to pay tax under the J&K General Sales Tax Act exists.

6. The petitioner, having not succeeded in carving out a prima facie case, is not entitled to invoke the writ jurisdiction of this Court in exercise of its power under Article 226 of the Constitution of India. It must be borne in mind that remedy available under Article 226 of the Constitution is equitable.

7. Whatsoever stated and discussed above, there is, in my opinion, no merit in this writ petition and is, accordingly, dismissed at the preliminary stage of admission.