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(2004) 01 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 550 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
Jammu and Kashmir General Sales Tax Act, 1962 — Section 11
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22(1)

Citation : (2010) 3 JKJ 327

Hon'ble Judges : Sudesh Kumar Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Gupta, J.—By means of this petition, Rom Industries Limited, a Company incorporated under Companies Act, Industrial Area, Phase

-II, Gangyal, Jammu, has sought quashing of the recovery notice/demand notices issued by respondent- 2 pertaining to the years 1994-95, 1995-

96, 2001-02, and 2003-03 contrary to the provisions of Sick Industrial Companies (Special Provisions) Act, 1985, by issuing a writ in the nature

of certiorari and further commanding respondents-2 and 3 to desist from making any assessment of the petitioner and effecting recovery by

attachment or by the sale of its assets and property or by use of any coercive methods, without obtaining prior permission from BIFR or AAIFR

till the proceeding are pending before Appellate Authority for Industrial and Financial Reconstruction and finally adjudicated upon in exercise of its

jurisdiction under Article 226 of the Constitution of India read with Section 103 of the Constitution of Jammu and Kashmir. The case of the

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petitioner as projected in the writ petition is that the petitioner is a Limited Company having its registered Office at Bhatinda, Punjab and one of its

registered Industrial Unit at Industrial Area, Gangyal, Jammu. The petitioner Company setup its unit at Jammu in pursuance of various incentives

promised, assured and extended by the State Government followed by their Industrial Policy formulated and promulgated from time to time to

attract the entrepreneurs from outside the State. The petitioner Company was granted exemption from payment of sales tax on the sales of finished

products manufactured by the Company, vide Government Order No. 10-IND of 1995, dated 19/01/1995. This exemption to the petitioner Unit

was withdrawn on the basis of judgment of Apex Court in Mahavir Oil Mills case. The order of withdrawal of exemption was challenged by filling

a Writ Petition No.610/1997, which stood dismissed and LPA preferred by the petitioner also met the same fate. This, however, led the petitioner

to file and SLP before the Apex Court, which it is stated is pending. Further, case of the petitioner is that on account of the withdrawal of the

exemption, the Company became sick and approached the Board of Industrial and Financial Reconstruction (hereinafter for short referred to as

BIFR). The BIFR, however, after hearing the case of the petitioner Unit rejected the claim of the petitioner to declare the Unit sick and initiate

proceedings for its rehabilitation under the Scheme. Against the order of rejection of declaring the petitioner-Unit as sick by the BIFR, appeal was

preferred before the Appellate Authority for Industrial and Financial Reconstruction (hereinafter for short referred to as AAIFR) and is pending

adjudication. The petitioner submitted that it was during the pendency of the proceedings before the AAIFR that respondents-2 and 3 considered

the case of the petitioner and assessed the Company and raised demand by issuing recovery notice dated 23rd March, 2002. This demand notice

was further followed by another demand notice dated 19/04/2002.

It is further stated that respondent-2 also assessed the petitioner for the accounting years 1997-98 and 1998-99 prior to this and issued recovery

certificates against the Firm. Against these recovery certificates, the petitioner approached respondent-3 for withdrawal or suspension of the

recovery process. The petitioner however, could not succeed before respondents-3 and final notice dated 26/04/2002, came to be issued

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requiring the petitioner to pay the outstanding amount on or before 02/05/2002 followed by an attachment Order dated 10/05/2002, in terms of

Section 64 o the Land Revenue Act. Petitioner having not succeeded in getting relief from the Commissioner, Sales Tax, approached the High

Court by filing a Writ Petition No. 476/2002, challenging the assessment orders, notice of demand and final attachment notices. When the matter

was pending before the High Court, the petitioner was assessed to tax for the accounting year 1998-99, and a demand for payment was raised

vide assessment order and notice of demand dated 15/ 01/2003. This led the petitioner to approach the court by filling another writ petition, OWP

No. 59/2003. Both these writ petitions, however, came to be disposed of with the observations that the petitioner should exhaust the remedies

provided under Jammu and Kashmir General Sales Tax Act, 1962. The appeals filed against the assessment orders for the accounting years 1997-

98 and 1998-99 before the Appellate Authority, Sale Tax, stood dismissed vide order dated 20/03/2003. Against the orders of the Appellate

Authority, Sales Tax, the petitioner referred the appeals before the State Sales Tax Appellate Tribunal and the same are pending adjudication. The

petitioner further submitted that the appeals were still pending and yet to be adjudicated upon the Sales Tax Appellate Tribunal when recovery

notices in pursuance of demand raised for the years 2000-01, 2001-02, 2002-03 besides accounting years 1994-95 and 1995-96 for the balance

amount, which the petitioner had not liquidated the full demands and for the balance amount by way of recovery certificates came to be issued by

respondent-3 for its recovery under the provisions of the Land Revenue Act, which became the subject matter of challenge in this writ petition.

2. According to Mr. Sunil Sethi, learned counsel appearing for the petitioner, the BIFR, after having been satisfied from the initial report of the

operating agency, declared the Company as sick industrial Company within the meaning of Section 3(1) of the Sick Industrial Company Act vide

its order dated 30th July, 1997. It was further submitted that the BIFR, however, subsequently rejected the claim of the petitioner, against which

appeal has been preferred before the AAIFR. That this fact was in the knowledge of the respondents and that the assessment of the petitioner-

Unit could not have been made followed by recovery proceedings initiated against the petitioner Company by issuing recovery notices/ certificates

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under the provisions of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter for short referred to as ""the SICA,

1985""). That the provisions of the SICA, 1985 have overriding effect on all other laws including the Jammu and Kashmir General Sales Tax Act,

therefore, all the recovery proceedings by adopting coercive measures by way of effecting attachment and sales of its assets, are illegal and without

jurisdiction and unsustainable in law. Whenever any enquiry is pending either before the BIFR, or appeal before the AAIFR, legal proceedings

against the Sick Industrial Unit u/s 22 of the SICA, 1985 are to be suspended as a natural consequence. Section 22 of the SICA, 1985, in

unequivocal terms, bars the execution/ implementation of proceedings for execution against the Sick Companies and its properties. In view of the

aforesaid, the proceedings against the petitioner Company for the imposing of sales tax and recovery by the respondent have to lie in abeyance till

the appeal is pending before the AAIFR.

3. The specific stand taken by the respondents in their reply is that the recovery certificates have been issued on the basis of the returns filed by the

petitioner-Company and turn over shown by him for the accounting years 2000-01, 2001-02 and 2002-03. The sales shown in the returns were

taxable under the provisions of the Jammu and Kashmir General Sales Tax Act, 1962 and the amount indicated in the recovery certificates is

payable on the basis of the returns of the petitioner. Further submission of the respondents is that equally efficacious alternate remedy by way of

appeal was available to the petitioner u/s 11 of the Jammu and Kashmir General Sales Tax Act, 1962 and without exhausting the statutory remedy,

the writ petition is not maintainable. It is also stated that the petitioner has based its claim on the ground that the BIFR, has declared the Unit as

sick industrial Unit and, as such, bar in initiating recovery proceedings in respect of arrears of sales tax and attachment of assets of the petitioner's

Unit is attracted under the provisions of Section 22 of the SICA, 1985. But this plea is not available to the petitioner as the BIFR, has rejected the

petitioner's claim to declare the petitioner's Unit as sick Industrial Unit and against which appeal is stated to have been preferred before the

AAIFR. Respondents have submitted that the petitioner has conducted sale of its products during the accounting years 2000-01, 2001-02, and

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2002-03, and filed the returns, on the basis of which he has been assessed and the demand has been raised and recovery proceedings initiated. It

is further contended that the petitioner has collected tax on the sale of its products. He is under an legal obligation to deposit the same with the

Government. Since the BIFR, has rejected the case of the petitioner as sick industrial Unit, the demand has been raised by the way of recovery

certificates on the basis of returns disclosing the sale of the products and the amount was reflected in the recovery certificates accordingly and thus

the respondents have neither violated nor contravened the provisions of the SICA, 1985, in any manner, whatsoever.

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

record.

5. It may be pointed out at the threshold that the purpose and object of suspension of proceedings etc. u/s 22(1) of the SICA, 1985 is to await the

outcome of the reference made to the BIFR for the revival and rehabilitation of sick Industrial company. Admitted facts emerging out of the record

are that the reference was made by the petitioner's Company to the BIFR, to be declared as sick industrial Unit under the SICA, 1985. The

reference was rejected by the BIFR. There is no plaint for revival or rehabilitation of the Unit against the rejection by the BIFR. The Company has

gone in appeal to the AAIFR u/s 25 of the Act, which is still pending. The spinal question that falls for consideration is as to whether the case of a

Company whose reference has been rejected by BIFR and against that rejected by BIFR and against that rejection order, it has gone in appeal in

AAIFR, falls within the ambit of Section 22 (1) of the SICA, 1985. In an identical case entitled IDBI v. Surekha Coated Tubes and Sheets Ltd.

(1996) 85 Comp. Gas. 594 (Del), 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 repetion of reference, it can not contend that it falls within the

ambit of the shelter provided in sub-section (1) of section 22. Relying on the ratio of the aforesaid judgment the contention raised by Mr. Sunil

Sethi, learned counsel appearing for the petitioner, that bar contemplated u/s 22 (1) of the SICA, 1985 is attracted and no proceedings for

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recovery and attachment against the Unit and its assets can be taken, is devoid of substance and cannot be accepted. It was next contended by

Mr. Sunil Sethi that during the pendency of the appeal before the AAIFR and also the Appellate Tribunal, the respondents have assessed the

petitioner for the accounting years 2000-01, 2001-02, and 2002-03 in contravention of the provisions of the SICA, 1985, though appears to be

attractive but cannot be accepted on account of multiple grounds.

6. The petitioner is stated to have conducted the sale of its products and collected tax for the accounting years referred above and also filed

returns. The petitioner -- Unit has been assessed on the basis of the returns. The demand raised and recovery certificates issued are in accordance

with the manner provide under the provisions of the Jammu and Kashmir General Sales Tax Act, 1962. There had been no direction issued by the

BIFR, refraining the authorities of the Sales Tax Department from assessing the petitioner on the basis of the returns filed in respect of the sale of its

products conducted or from recovering the tax outstanding against it. Apart from that, the petitioner, if felt aggrieved of the demand raised or

recovery certificates issued in respect of the sales tax for the accounting years 2000-01, 2001-02, and 2002-03,. appeal is provided u/s 11 of the

Jammu and Kashmir General Sales Tax Act, which is equally an alternate efficacious legal remedy provided under the Act, is not entitled to

maintain the writ petition. Undoubtedly, proceedings before the BIFR though 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 at the same time, there are 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 in providing them a cover. It is

meaningful to point out that section 22 is not meant to breed dishonesty nor can it be operated so as to encourage unfair practices. The ultimate

prejudice to public money should not be overlooked in the process of promoting industrial progress. 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.

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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.

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