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(2014) 06 KL CK 0222

In the High Court Of Kerala

Case No : W.P. (C). No. 10086 of 2014 (I)

Spartek Ceramics India Ltd. APPELLANT

Vs

Assistant Commissioner RESPONDENT

Date of Decision : 17-06-2014

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 34
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22

Citation : (2014) 06 KL CK 0222

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : Anil D. Nair, Sri Sreejith R. Nair, Smt. C.S. Sulekha Beevi and Smt. Rosie Athulya Joseph, Advocate for the Appellant; Shoba Annamma Eapen, Sr. Government Pleader, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

K. Vinod Chandran, J.—The petitioner is aggrieved by the dismissal of the appeals filed for the years 2000-01 to 2004-05; altogether five appeals, by Ext.P8 order for reason only of the petitioner having not produced proof of admitted tax paid. The subsequent appeal filed before the Tribunal also was dismissed for the very same reason. In fact, it is a condition as per the statute, for filing an appeal, that the admitted tax has to be paid. There can be no hardship caused to the petitioner because admitted tax would take in that specified in the ''returns'' filed by the petitioner, in the respective assessment years which definitely would be collected tax and which has to be paid before 15th of the subsequent month; when the statute mandates the filing of the return for the preceding month.

2. The petitioner''s contention is that the petitioner does not have any proof of remittance for reason of floods and the petitioner''s office being inundated on that account. Petitioner also has an alternate contention that the petitioner Company having been declared sick under the provisions of the Sick Industrial

Companies (Special Provisions) Act, 1985 (for short SICA), the properties are saved from any recovery as per Section 22 of the SICA.

3. With respect to the first contention as to no proof of demand being available, the Assessing Officer could well look into the returns filed and for the respective years, assert as to how much tax was paid. The Assessing Officer could also issue a statement on that account to the petitioner. The second contention is as to whether the petitioner has any protection u/s 22 of SICA. Section 22 of SICA provides for protection from recovery, distress or like proceedings for recovery against the properties of the Company if the Company is registered as a Sick Industrial Company by the BIFR or a Company for the revival of which, a Scheme is pending enquiry or implementation before the authorities under the Act, or an appeal pending before the appellate authority.

4. In the present case, there is no recovery sought to be made from the petitioner; even according to the petitioner. Petitioner''s contention is only that since no recovery can be effected, the petitioner''s liability does not arise at present. That argument cannot be countenanced. It is the petitioner''s option to file an appeal but on exercising such option; to be entitled for the appeal to be maintained; compliance of the third proviso to Section 34 of the Kerala General Sales Tax Act, 1963, is mandatory. The admitted tax has to be paid though no distress, execution or like recovery can be effected against the company''s property. The registration as a sick industry under SICA does not efface the liability and Section 22; for the period covered and spent under SICA, keeps the recovery proceedings in abeyance. If the petitioner choses to file an appeal, necessarily statutory mandate has to be complied with and the admitted tax paid. In such circumstances, petitioner, for the purpose of filing an appeal, cannot be said to have any protection u/s 22 of SICA; to act in derogation of the statutory compulsion to prove payment of the admitted tax.

5. If the petitioner approaches the Assessing Officer, within a period of one week from today, the Assessing Officer shall verify the returns of the petitioner for the respective years and shall give a statement in writing as to the balance due on the admitted tax, as per the returns. If the petitioner remits that amount with applicable interest, within a period of six weeks from that date, the petitioner''s appeals shall stand restored; on the petitioner producing a certificate to that effect from the Assessing Officer. If that is done within eight weeks from today; Exts.P6 and P8 shall stand set aside and the appeals shall be restored to the files of the 1st Appellate Authority who shall consider the same on merits.

With the above direction, the writ petition is disposed of.

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