(2010) 09 MAD CK 0014

In the Madras High Court

Case No : Writ Petition (MD) No. 121 of 2010 and M.P. (MD) No. 1 of 2010

S.S.D. Spinning Mills — APPELLANT

Vs

The Commercial Tax Officer-I — RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:
Companies Act, 1956 — Section 16, 17, 25
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22, 22(1)

Citation : (2011) 41 VST 510

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : M. Md. Ibrahim Ali, for A.S. Mujibur Rahman, for the Appellant; V. Rajasekaran, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—The writ petition is directed against the notice, dated 04.12.2009, issued by the Commercial Tax Officer-I, Kovilpatti,

Tuticorin District, by which the Respondent has directed payment of tax to the tune of Rs. 10,32,185/-, for the period November, 2007 to August,

2009, within seven days.

2. A reading of the impugned notice shows that proceedings are pending before BIFR against the Petitioner company and it is an admitted fact. In

those circumstances, u/s 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, which is as follows,

22. Suspension of legal proceedings, contracts, etc. (1)Where in respect of an industrial company, an inquiry u/s 16 is pending or any scheme

referred to u/s 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal u/s 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the

memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no

proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial

company or for the appointment of a receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security

against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded

with further, except with the consent of the Board or, as the case may be, the Appellate Authority.

the amount is not recoverable, since proceedings are before BIFR where rehabilitation may be effected in course of time.

3. This was considered in a hierarchy of judgments commencing from the earliest case in Deputy Commercial Tax Officer and Others Vs.

Corromandal Pharmaceuticals and Others, and subsequent judgments. This was also considered by me in W.P. (MD) Nos. 1522 and 1523 of

2004, decided on 18.07.2008 and held as follows:

10. By applying the legal principles laid down to the facts and circumstances of the case, the necessary corollary to conclude is that the

Respondents cannot proceed with either distress action as it is seen in respect of the Commercial Tax Department or for recovery of amount by

the Public Works Department unless consent is obtained from BIFR. It is always open to the Respondents tin these cases to take necessary steps

to implead themselves before BIFR and seek permission for the purpose of recovery of the amount from the assets of the Petitioner''s company,

which has been declared as ""sick company"", in which event, it is for BIFR to decide on merit and based on the scheme that may be formulated as

per the provisions of the SICA Act.

4. The contention of the learned Special Government Pleader, by placing reliance on the judgment of the Hon''ble Supreme Court reported in 105

STC 327, to the effect that a person who collected sales tax which legitimately belonged to the Revenue cannot be expected to keep the same

with him under the guise of protection given in Section 22 of the Sick Industrial

Companies (Special Provisions) Act, 1985, is unfounded. The said

judgment of the Supreme Court makes it very clear that the same is applicable in cases where the amount of sales tax which was liable to be paid

subsequent to the proceedings in BIFR and as long as the amounts of sales tax to be paid before BIFR proceedings are commenced, certainly they

are to be referred to BIFR as per Section 22 of the said Act. However, on the facts of the present case, it was a failure on the part of the

Petitioner to comply with the Deferral Scheme and non-payment of the amount, as per the instalments, has resulted in accumulation of the said

amount. Therefore looking at in any angle, the impugned notice issued by the Respondent is not sustainable in law, especially u/s 22 of the Sick

Industrial Companies (Special Provisions) Act, 1985.

5. In these circumstances, leaving it open to the Respondent to implead itself in the proceedings before BIFR and seek for the relief, the writ

petition stands allowed and the impugned notice is set aside. No order as to costs. Connected M.P. (MD) No. 1 of 2010 is closed.