(2014) 04 P&H CK 0142

In the Punjab And Haryana At Chandigarh

Case No : CWP-7965-2014

State of Punjab and Another — APPELLANT

Vs

M/s. Twenty First Century Steels Ltd. and Others — RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2014) 04 P&H CK 0142

Hon'ble Judges : Sanjay Kishan Kaul, C.J;Arun Palli, J

Bench : Division Bench

Advocate : J.S. Puri, Additional Advocate General, Punjab, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, C.J.—The net worth of respondent No. 1 became negative resulting into proceedings before the Board of Industrial and Financial Reconstruction (in short BIFR) under the Sick Industrial Companies (Special Provisions) Act, 1985. The scheme for rehabilitation and revival was initiated and the petitioners before us undisputedly consented to the concessions under the scheme. One of the concessions was qua charging of electricity duty and recommendation which was accepted, as contained in the letter dated 11.07.2007 of the Punjab State Industrial Development Corporation Ltd., is as under:-

Recommendation No. 2

To consider to exempt the sick company from charge of electricity duty.

The Committee decided to exempt the sick company from charge of electricity duty at 50% of the applicable duty for seven years instead of 100% as desired by the company.

2. In pursuance to the concession contained in the scheme, a notification dated

22.11.2007 was issued by the Department of Power granting to respondent No. 1 50% exemption from payment of electricity duty. At the relevant stage of time, the duty was 10% and the period for which the concession was granted was 07 years from 01.04.2006. Thus, this notification stated "the Governor of Punjab is pleased to grant relief of 50% exemption from the payment of Electricity Duty which is charged @ 10% advalorem for a period of 07 years from 1st April, 2006 to M/s. Twenty First Century Steels Limited Mandi Gobindgarh."

3. The electricity duty was subsequently revised vide notification dated 25.05.2010 raising the levy of electricity duty to 13% advalorem w.e.f. 01.04.2010. However, in terms of this notification, the concession was restricted to 5% instead of grant of 6.5% requiring the balance 8% to be deposited.

4. The aforesaid action of the petitioners gave a rise to an application before the BIFR/respondent No. 2 by respondent No. 1 which accepted the plea vide an order dated 17.01.2013. The reasoning which permeates this order is that the concession was never restricted to 5%, but to 50% of the duty which concession had been accepted. This is as per the scheme. The notification dated 22.11.2007 was pursuant to the concession made under the scheme where the petitioners set out the then prevalent duty. Thus, on revision of the duty upwards to 13%, the 50% concession would amount to 6.5% and not only a concession of 5%.

5. The petitioners assailed this order before the Appellate Authority for Industrial & Financial Reconstruction (in short AAIFR) which has dismissed the appeal vide order dated 29.10.2013. It is this order which is sought to be assailed before us in the present writ petition under Article 226 of the Constitution of India.

6. We have heard learned State counsel for the petitioners.

7. We find no infirmity with the impugned orders passed by the BIFR and the AAIFR. The reasoning which permeates both the orders is unexceptionable. There can be no doubt on a reading of the concession under the scheme that what was envisaged was an exemption from charging of 50% of the electricity duty instead of 100%. Thus, whatever be the duty, 50% exemption had to be granted. The notification dated 22.11.2007 was a sequitur to the consent under the scheme and could not have given more or less than the scheme. The mention of the existing duty at 10% and 50% exemption being granted thereof was a matter of fact. On the duty being revised upwards to 13%, it cannot be said that the concession would remain 5%, as the scheme envisaged the concession to be 50% which would be 6.5%. The phraseology used in the scheme is "50% of the applicable duty for 07 years". Thus, whatever be the duty prevalent in these 07 years, 50% concession had to be given.

8. The petition being meritless is dismissed.

