(2002) 04 CAL CK 0024

In the Calcutta High Court

Case No : Ordinary Original Civil Jurisdiction T. No. 161 of 2002

Vijayashree Limited and Another APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 30-04-2002

Acts Referred:
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 4A

Citation : (2002) 3 CALLT 345

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : P.K. Mullick, Utpal Majumdar and Sajal Das, for the Appellant;Seba Roy, for the Respondent

Judgement

Amitava Lala, J.—The petitioner No. 1 presently is a sick company under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. The petitioner No. 2 claims to be the Director of the company. He verified the affidavit in support of the writ petition. Affidavit of competency duly filed by the petitioner No. 2.

2. The contention of the writ petitioners is that the BIFR sanctioned a scheme for revival of the petitioner company by an order dated 30th June, 2000. On 5th April, 1999 an Act being West Bengal Sales Tax (Settlement of Disputes) Act, 1999 came into force. Consequently, respective Rules came into force on 12th July, 2000. Under the order of the BIFR the scheme has been provided grant soft loan by the Government of West Bengal to cover disputed Sales Tax which is under appeal, if the company are ordered to pay at concessional rate of interest prescribed in the incentive scheme of 1999. On 4th December, 2000 the petitioner requested the appropriate respondent to grant sales tax loan. On 3rd September, 2001 State Government sanctioned loan for a sum of Rs. 734 lakhs (Rupees Seven crores thirty four lakhs only) through the West Bengal Industrial Development Commission to pay the admitted arrear taxes. On 3rd September, 2001 itself the petitioner made an application for exemption of stamp duty which

is payable for exemption of bond which is required before availing the said loan of Rs. 734 lakhs.

3. In between 2nd November, and 27th December of 2001, the petitioners filed 23 applications u/s 5 of the West Bengal (Settlement of Disputes) Act, 1999. Such applications were made before the appellate authority. According to the learned counsel appearing for the Sales Tax Authority, on 27th December, 2001 the State Government passed order of exemption of stamp duty payable on bond to be executed by them. 31st December, 2001 was the last date for filing application as well as payment for admitted sales tax dues as per the aforesaid Act. Two days before, on 29th December, 2001 the petitioner No. 1 company wrote a letter to the Additional Commissioner of Commercial Tax as the applications filed by the petitioner under the Act and are pending, they are required to pay a sum of Rs. 1,30,43,678/- (Rupees One crore thirty lakhs forty three thousand and six hundred seventy eight) only as admitted tax but since the State Government has not disbursed the loan, the said applications may be kept pending considering that the petitioner No. 1 is a sick company. After various correspondence and after execution of the bond in between State Government and the West Bengal Industrial Development Corporation on 25th February, 2002, the petitioner receive a letter from Industrial Reconstruction Department to the effect that the Commissioner of Commercial Tax is not agreeable to receive the said amount of Rs. 1,30,43,678/- against payment of admitted tax. The said Commissioner has asked entire amount of Rs. 734 lakhs due and payable in this account. Incidentally it is necessary to state hereunder, the petitioner wanted to pay a further sum of Rs. 72,65,820/- (Rupees Seventy two lakhs sixty five thousand and eight hundred twenty) only in addition to s. 1,30,43,678/-totalling to Rs. 2,03,09,498/- (Rupees Two crores three lakhs nine thousand four ninety eight) only.

4. The petitioners contended that the company was sick. The revival is proposed by the BIFR. The state was approached for the purpose of granting loan of Rs. 734 lakhs in favour of the Commissioner of Commercial Taxes. Time to made payment expired not for the petitioners but for the delay in execution of documents by the two governmental authorities which was beyond control of the petitioners. Necessary applications were made within the time. Therefore, only requirement is acceptance of the amount by the Sales Tax Authorities. If out of 734 lakhs Rs. 1,30,43,678/- is sanctioned the petitioners cannot be held responsible for the same because the money will go from one department of the State to other. The petitioner will not be benefited by way of encashment or by utilising the same in other account. Even the rest amount out of 734 lakhs upon deducting the amount directed to be paid cannot come in the account of the company but will remain either with this State Government or with the West Bengal Industrial Development Corporation through whom the disbursement will be made to the sales tax authority for which the petitioners are only accountable similarly with such department which will disburse the same.

5. Upon hearing the petitioners I have called upon the learned counsel appearing for the Sales Tax Authority to take appropriate instruction when, in turn, she has taken written instruction from the Deputy Commissioner, Commercial Taxes, Law section being dated 11th March, 2002 wherefrom I find that such authority was directed by the Commissioner of Commercial Taxes, West Bengal to inform that the petitioner company is not entitled to get benefits under West Bengal (Settlement of Disputes) Act, 1999 on payment of admitted tax after 31st December, 2001 under the relevant Act. A photo copy of the same is kept with the record. Learned counsel appearing for the authority contended that they are bound by the Act, therefore, they cannot accept such amount beyond the period. The time has been mandatorily fixed. Such time cannot be extended in any manner whatsoever.

6. According to me, each and every procedural law has been made to render justice but not injustice to the people. A procedural law should be the pathway of substantial justice. Therefore, reading and interpretation of statute is to be guided by such principle. In other words if any procedural law appears to be not capable of rendering justice it has to be struck down because it will prevent the substantial justice available under the law. At the present moment I did not want to travel to that far. Let me read the law in my way. Section 5(1)(a) of the Act says that an application for the relevant purpose shall be made to the designated authority by an applicant in such form, and in such manner as may be prescribed on or before 31st day of December 2001 or by such later date as the State Government may, by notification in the official gazette specify from time to time. Similarly, u/s 5(1)(b) of the Act, an application for the purpose of Section 4A shall be made to the designated authority by an application in such form and in such manner as may be prescribed on or before the 31st day of December. 2001 or by such letter date as the State Government may, by notification in the official gazette, specify from time to time. Previously, the cut off date was 31st day of March, 2001 which has been extended upto 31st day of December, 2001 by a subsequent insertion with effect from 12th of July, 2000. It appears that Section 4A of the Act is a new insertion wherefrom it appears that pending application also includes application before the tribunal or High Court or Supreme Court. As per Rule 2(1)(a) of the prescribed rules and "appeal or revision pending" means an appeal or revision where my attention of such appeal or revision is presented under the relevant Act or any date prior to the 1st day of January, 1999, and is pending on the 31st day of December, 1998, before the appropriate appellate authority, and includes such appeal or revision in respect of which an amount of admitted tax, penalty, or interest, if remaining unpaid, wholly or partly, is paid by the applicant in full before making of an application by him for settlement of any dispute u/s 5 of the Act. Appeal or revision means appeal or revision under the Act before the appropriate appellate or revisional authority.

7. Before going any further I have to explain the purport of the Act and rules. The purport is that if the arrear tax penalty or interest under the West Bengal Sales Tax Act, 1994 etc. is unpaid the same shall be allowed to be paid as

expeditiously as possible by way of settlement of dispute under this Act. Therefore, by nomenclature although it is an Act but virtually it is a scheme under the parent Act, i.e. The West Bengal Sales Tax Act, 1994 or Central Sales Tax Act, 1956 etc. made for the aforesaid purpose. Therefore, Court will have to be guided by the productivity of the Act. By this Act, authority wanted to settle the dispute expeditiously to increase the revenue earning but not decrease the revenue earning. Therefore, the motto of the scheme is to welcome the parties to pay of the settled dues. Defect in the present case is that the applications were made within time but not paid to them within time. They wanted to pay after the expiry of the period of 31st day of December, 2001, not on their fault but at the fault of the other department of the Government itself. Therefore, such exigency cannot be ruled out. Alternatively if I refuse the petitioners no fruitful purpose will be served. The conditions will be suggestions of the BIFR. Either the State will accept such suggestion or ask for alternative suggestions. But in one hand accept the suggestion and in other hand frustrate the same can not be held to transparent sign of encouragement of industry in the State.

8. Learned senior counsel appearing in support of the petitioner has drawn my attention to the Maxwell''s Book of Statutory Interpretation and said it is impossible to lay down any general rule for determining whether a provision is imperative or directory. It is a duty of the Courts of Justice to try to get at the real intention of the legislature by carefully attending to the whole scope to the statute. He also brought my attention to the Book of Statutory Principle written by Justice Singh where I find that a general idea in respect of mandatory and directory provisions are laid down therein. It appears from the writings of the author that the study of numerous cases of this topic lead to formulation of any universal rule except this that language often not decisive and regard must be had to the context, subject matter and object of the statutory provisions in question, which can determine whether the same is mandatory of directory.

9. According to me, the intention of the legislature is the prime consideration to come to definite conclusion whether the scope and ambit of the Act mandatory or directory. As I have already discussed that the Act and rules are made to enable the parties to settle the disputes with the authorities so that public exchequer can be benefited. I did not think that such Act and rules are more than as amnesty scheme in whatever form it is made. Therefore, the purpose of the said Act can not be said to be mandatory in nature. Moreover, the way of implementation is also supports the prescription under this order. Previously, the cut off date was made on 31st day of March, 2001 but subsequently the same has been extended up to 31st day of December, 2001. Even such cut off date can be extended by the State Government by way of notification etc. specifying from time to time. Therefore, even from the plain reading it cannot be said that the time period under the section of the Act is mandatory in nature.

10. A further question may arise that when there is no further notification for the extension is there a time cannot be granted. But notification will be made for the

aggrieved parties who are Unaware of the facts and circumstances to be made known. This is not such a case. This is unique one. Here the applications are made within the time and for the purpose of borrowing the money to deposit steps are taken to within the time but the sanction came after the time period. Therefore, why such money will not be accepted but refused from accepting, is best known to Sales Tax Authority. It is a transfer of money from one head of the State to other on account of the petitioners.

11. Therefore, I find no reason to see to discourage the petitioners from getting an order from the Court for the purpose of release of the amount already ready for transfer as aforesaid to the Sales Tax Authorities on account of the petitioner without prejudice to the rights and contentions of the admitted claims. However, such amount will be transferred within a period of fortnight from the date of communication of this order by the West Bengal Industrial Development Corporation to the appropriate Sales Tax Authority. A process in respect of the remaining balance will also be expedited by such authority accordingly so that entire sum can also be transferred in favour of the Sales Tax Authority as early as possible. However, the petitioner is injuncted from using any part of such total sum of Rs. 734 lakhs for any other purpose or transfer to any account other the account of State Sales Tax Authority.

12. Thus, this writ petition stands disposed of. No order is passed as to costs. Since no affidavit has been directed to be filed by this Court, no allegation is deemed to be admitted by them.

13. Xeroxed certified copies of this judgment will be supplied to the parties within seven days from the date of putting requisites for drawing up and completion of the order and certified copy of this judgment.

All parties are to act on a signed copy minutes of the operative part of this judgment on the usual undertaking and subject to satisfaction of the Officer of the Court in respect as above.