(2012) 08 MP CK 0189

In the Madhya Pradesh High Court

Case No : Writ Petition No. 6665 of 2012

Vippy Industries Ltd., Dewas APPELLANT

Vs

State of Madhya Pradesh and 4 Others RESPONDENT

Date of Decision : 08-08-2012

Acts Referred:
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 19, 22

Citation : (2013) 58 VST 162

Hon'ble Judges : Shantanu Kemkar, J;Prakash Shrivastava, J

Bench : Division Bench

Advocate : P.M. Choudhary, for the Appellant; Mini Ravindran, Learned Deputy Govt. Advocate for the State, for the Respondent

Judgement

Shantanu Kemkar, J.—The petitioner, a Limited Company, has filed this petition challenging the order dated 11.10.2010 (Annexure- P/1) passed by the High Level Committee by which it has refused to extend the period of exemption under Notification No. A-3-24-94-ST-V (108) dated 06.10.1994 inspite of there being directions issued by the BIFR in the scheme sanctioned on 04.10.2007 for the revival / rehabilitation of the petitioner Company. The petitioner has also challenged the consequential orders of assessment dated 10.01.2012 (Annexures-P/2 & P/3) passed by the Assessing Authority refusing to grant the benefit of exemption for want of eligibility certificate for such exemption from tax under M. P. Value Added Tax Act, 2002 and Central Sales Tax Act, 1956. According to the petitioner no demands could be raised on the basis of the impugned assessment orders (Annexures-P/2 & P/3) as the same is not enforceable against the petitioner during implementation of the scheme in view of provisions of Section 22 of the SICA. Briefly stated the petitioner Company engaged in the business of solvent extraction of Oil and D-oiled Cake had established its Unit at Dewas. The petitioner claims to be a duly registered dealer under the State as also under the Central Sales Tax Laws.

2. It has been averred by the petitioner that it was granted an eligibility

certificate on 05.02.2000 for exemption from payment of tax under Notification dated 06.10.1994 in respect of its HIPRO-EOU Division for a period of 5 years from 01.02.1996 to 31.01.2001. As the petitioner''s Unit remained non-operative for a period of 1362 days, it could not avail the benefit of exemption during the period of eligibility. In the circumstances, petitioner approached the State Level Committee for extension of exemption vide application dated 21.11.2001. The State Level Committee rejected the petitioner''s prayer in its meeting held on 31.10.2003 by observing that there is no provision for extension of the period of exemption. Feeling aggrieved, the petitioner filed an appeal before the State Appellate Forum. The matter was referred to the Cabinet Committee as per the decision dated 05.03.2005. However, the Cabinet Committee also rejected the petitioner''s prayer for extension of exemption as communicated to the petitioner on 06.02.2006.

3. By the time above orders were passed, the petitioner Company became a Sick Industrial Company and was declared as a "Sick Industrial Unit" by BIFR and a scheme for revival / rehabilitation was under preparation / consideration. Therefore, the petitioner once again submitted an application on 23.03.2006 before the State Government through the Ministry of Commerce Industries and Commercial Tax Department seeking review / reconsideration of the earlier decision.

4. As the petitioner became a Sick Industrial Company, it had approached the BIFR for its revival / rehabilitation which lead to the declaration of the petitioner as a Sick Industrial Undertaking as per the provisions contained in SICA. On 04.10.2007 the BIFR finally sanctioned the scheme for revival / rehabilitation of the petitioner Company. The scheme for revival / rehabilitation was sanctioned by BIFR after due compliance with the provisions of Section 19 of the SICA by circulating the scheme among all and after inviting the objections from all concerned. In the proceedings before BIFR the representatives of the State of Madhya Pradesh were also present. As per Clause 17 (E) of the Sanctioned Scheme, it was directed to provide extension of period of exemption granted to the petitioner''s aforesaid Division in respect of Commercial Tax, Central Sales Tax, Value Added Tax and Entry Tax for the number of days the Unit remained non-operative [application for which is pending before the Cabinet Committee] and for a further period of 5 years after expiry of period extended per particulars above.

5. The case of the petitioner is that the aforesaid scheme sanctioned by the BIFR has never been challenged by the State Authorities and the same having become final, by virtue of provisions of Section 19 of SICA, the said directions of the BIFR are binding on the State of Madhya Pradesh as also on the Commercial Tax Department. According to the petitioner ignoring the provisions contained in Section 19 of SICA the impugned decision dated 11.10.2010 (Annexure-P/1) has been taken by the High Level Committee which according to the petitioner is liable to be quashed.

6. Heard Learned Counsel for the parties.

7. Having gone through the decision dated 11.10.2010 taken by the High Level Committee, we find that the High Level Committee has declined the relief claimed by the petitioner by observing that it is not within the jurisdiction of High Level Committee to take decision in the matter. It has not been disputed by Learned Counsel for the petitioner that the decision is to be taken by the State Government and not by the High Level Committee. He, however, submitted that in yet another Writ Petition No. 8705 of 2010, a reply has been filed by the Respondents taking a stand that the grant of reliefs and concessions as particular matter of policy falling within the domain of the State Government and the State Government is not duty bound to formulate any policy regarding exemption to tax on the basis of the guidelines of the scheme for revival sanctioned by the BIFR, and, therefore, there is no possibility that the State Government would take a favourable decision in regard to the petitioner''s claim.

8. Having considered the submissions made by the Learned Counsel for the parties, we are of the view that the decision about the claim of the writ petitioner is to be taken by the State Government and not by the High Level Committee. The decision necessarily is required to be taken keeping in view the directions contained in the scheme sanctioned by the BIFR and also keeping in view the provisions of SICA. However, undisputedly no such decision has been taken so far by the State Government after the sanction of the scheme. It is also clear that the High Level Committee has not considered the petitioner''s claim on merits but has merely observed that the petitioner''s claim cannot be considered by it for want of necessary powers / jurisdiction for the same.

9. In the aforesaid circumstances we feel it necessary to issue directions to the State Government for taking appropriate decision on the petitioner''s claim at the earliest on the basis of the scheme sanctioned by the BIFR keeping in view the provisions contained in SICA. Needless to say that while taking the decision, the stand taken by the Assistant Commissioner, Commercial Tax in the reply filed in Writ Petition No. 8705 of 2010 that the State Government is not bound by the guidelines of the scheme for revival sanction by BIFR shall not come in the way of the Competent Authority of the State Government for taking appropriate decision. Let the petitioner''s claim on the basis of the scheme sanctioned by the BIFR be considered and decided as expeditiously as possible, preferably within four months from the date of receipt of copy of this order. Petitioner to submit all necessary documents before the State Government along with copy of this order. Till the decision as aforesaid is taken by the State Government, no coercive steps be taken against the petitioner in pursuance to the impugned assessment orders (Annexures-P/2 & P/3).