

(2014) 01 MP CK 0029

Madhya Pradesh High Court (Indore Bench)

Case No: W.P. No. 7446 of 2011

Premier Industries (India)
Limited

APPELLANT

Vs

Commercial Tax
Officer-Cum-Additional
Tehsildar, Circle 9 and Others

RESPONDENT

Date of Decision: Jan. 7, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226
- Madhya Pradesh Land Revenue Code, 1959 - Section 146
- Sick Industrial Companies (Special Provisions) Act, 1985 - Section 16, 17, 22, 25

Citation: (2014) 69 VST 383

Hon'ble Judges: Shantanu Kemkar, J; M.C. Garg, J

Bench: Division Bench

Advocate: P.M. Choudhary, Advocate for the Appellant; Sudarshan Joshi, Panel Lawyer,
Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. Heard. The present petition is directed against the coercive steps adopted by respondent No. 1 for recovery of the arrears of taxes relating to commercial tax, Central sales tax and entry tax vide impugned notices issued by him u/s 146 of the Madhya Pradesh Land Revenue Code. The petitioner also seeks to challenge the impugned garnishee order issued by the said respondent to the petitioner's banker-Canara Bank, RNT Marg, Indore, directing the said bank to deposit the amount stated in the notice with the Commercial Tax Department, within seven days from the date of issue/service of the said notice. The impugned recovery proceedings and the coercive steps adopted by respondent No. 1 which are being challenged in this petition has been illegal, bad in law and without jurisdiction on

the ground that the same are contrary to the provisions of section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to in this petition for short, as "the SICA").

2. The petitioner also seeks to challenge the demand raised by respondent No. 1 requiring the petitioner to pay the entire deferred amount of taxes in one single installment on the ground that the entire amount as stated in the notices as also the garnishee orders has not become due in view of the fact that the petitioner is eligible for year-wise deferment of the arrears of sales tax in terms of the directions of the BIFR issued at the time of sanctioning the scheme for revival of the petitioner-company framed and sanctioned under the provisions of the SICA. According to the petitioner the deferred amount of taxes in view of the deferment benefit granted to the petitioner would also become due and payable from year to year and cannot be recovered in one single installment immediately after the completion of the deferment period.

3. During the course of the day, learned counsel for the petitioner, has brought to our notice section 22 of the SICA which reads as under:

22. Suspension of legal proceedings, contract, etc.--(1) Where in respect of an industrial company, an enquiry 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.

4. It has been submitted that while on the one hand the matter regarding declaration of the petitioner as relief undertaking is under consideration before the Industries Department of the State Government and on the other hand when the scheme sanctioned by BIFR is still under the implementation, respondent No. 1 has already issued notices for recovery of the deferred relating to sales tax/commercial tax, Central sales tax as also the entry tax vide his impugned notices issued u/s 146 of the M.P. Land Revenue Code and has threatened the petitioner with the coercive action in case of the failure to comply with the said notices. It is further strange to note that even before the expiry of said period of seven days, the said respondent No. 1 has further issued a garnishee order (annexure P6) to the petitioner's bank, viz., Canara Bank, RNT Marg, Indore, directing the said bank to transfer an amount

of Rs. 15,13,53,068 to the Sales Tax Department. It may be relevant to note that the amount shown as recoverable from the petitioner in the said order is much more than the amount specified in the notices, annexure (P1 to P5). The petitioner submits that in view of the said action taken by respondent No. 1, which is ex facie contrary to the provisions of section 22, the petitioner is constrained to approach this honourable court by way of this petition under article 226 of the Constitution of India.

5. Having heard the learned counsel for the parties and having gone through the provisions contained u/s 22 of the SICA, we are of the considered view that in the present case, once proceedings have been initiated with respect to the reconstruction of the company under the provisions of SICA, the recovery proceedings against the petitioner is not permissible unless the permission is obtained from the Board concerned by the respondents for initiating the recovery proceedings.

6. With these observations, the petition stands disposed of. C.C. as per rules.