

Modi Industries Ltd. Vs. State of U.P.

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Court : Allahabad

Decided On : May-23-1997

Reported in : 1999(105)ELT29(All)

Judge : Om Prakash and ;S.L. Saraf, JJ.

Acts : Sick Industrial Companies (Special Provisions) Act, 1985 - Sections 3(1), 18 and 22; Central Sales Tax Act

Appeal No. : Civil Misc. Writ Petition No. 1011 of 1991

Appellant : Modi Industries Ltd.

Respondent : State of U.P.

Advocate for Def. : H.R. Misra, Standing Counsel

Advocate for Pet/Ap. : Bharat Ji Agrawal, Sr. Adv. and ;Rakesh Kumar Agrawal, Adv.

Disposition : Petition allowed

Judgement :

1. Heard Counsel for the parties.

2. Admittedly, the petitioner is a sick unit within the meaning of Section 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985 (briefly, the Act).

3. The petitioner seeks quashing of the recovery proceedings initiated in regard to sales tax dues. Our attention has been drawn by Counsel for the petitioner to the Circulars dated 25-8-1995 and 6-11-1989 issued by the Trade Tax Commissioner. In the said circulars the Commissioner clearly stated that no recovery of sale tax dues will be made from a sick unit without permission of the Board as provided under Section 22 of the Act. It is trite that the circulars are binding on the departmental authorities.

4. It is also submitted by the Counsel for the petitioner that IDBI was appointed as creating agency for preparing a rehabilitation scheme within the meaning of Section 18 of the Act, which is yet to be finalised.

5. Shorn of merits, no recovery could be made from the petitioner in the teeth of the above circulars and, therefore, we have no hesitation in staying the recovery proceedings initiated against the petitioner a sick unit. However, it will be open to the respondents to make recovery with the permission of the Board within the meaning of Section 22 of the Act or after rehabilitation scheme is finalised under Section 18 of the Act.

6. In the result, the petition succeeds and is allowed and recovery proceedings initiated in regard to sales tax dues for the assessment years 1986-87 and 1987-88 under the U.P. and Central Sales Tax Act will remain under animated suspension until permission is obtained by the respondents under Section 22 of the Act or rehabilitation scheme is finalised under Section 18 of the Act, whichever is earlier.