

C.C.E. Vs. Appellate Authority for Indl. and Financial Reconst.

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Court : Madhya Pradesh

Decided On : Feb-29-2000

Reported in : 2005(182)ELT153(MP)

Judge : N.K. Jain, J.

Acts : Sick Industrial Companies (Special Provisions) Act, 1985 - Sections 17, 18(4), 19(3), 22 and 22(1); Central Excise Rules - Rule 230

Appeal No. : Writ Petition No. 849/98

Appellant : C.C.E.

Respondent : Appellate Authority for Indl. and Financial Reconst.

Advocate for Def. : Dholakia, Sr. Counsel and ;Ramesh Saboo, Adv.

Advocate for Pet/Ap. : B.C. Nema, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

N.K. Jain, J.

1. This petition by the Union of India is directed against the Order dated 28-4-1998, passed by the Appellate Authority for Industrial and Financial

Reconstruction, New Delhi, dismissing appeal of the petitioner against the Order passed by the B. I. F. R. rejecting their application for permission to sell the material detained by the Order of detention passed Under Rule 230 of the Central Excise Rules.

2. During the pendency of this petition, the B I F R has passed final Order Under Section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985, declaring the respondent No. 3 - Company, as Sick Unit (vide Annexure R-3/1). Section 22 of the Act of 1985 has in such a situation, the effect of suspension of every legal proceeding commenced or pending for recovery of any dues against the sick company. Since the respondent-Company has been declared Sick by the B.I.F.R., any action taken by the petitioner - Department for recovery of the dues against the Company stands suspended and now recoveries can be made only in accordance with the Scheme which may be framed by the operating agency to be appointed and controlled by the Board. In view of this, this petition is rendered infructuous.

3. Learned counsel, for the petitioner has, however, relied upon a decision in Dy. Commercial Tax Officer v. Coromandal Pharmaceutical - 1997 (10) SCC 649 to press his point that the right of the petitioner - Department to make recovery of its dues does not get washed off on account of the decision of the B.I.F.R.

4. I have very carefully considered the judgment in Coromandal (supra). In fact that judgment relates to the tax liabilities which have accrued due after passing of the Order Under Section 18(4) and 19(3) of the Act. There can certainly be no quarrel with the preposition that right of recovery of such dues which may accrue after passing of the Order, Under the aforesaid provisions, remains unaffected. However, in the instant case, the recovery relates to the liability accrued before initiation of the proceedings under the Act and passing of the Order by the B.I.F.R. Section 22(1) of the Act clearly places an embargo on the right of the creditors to proceed with any such recovery proceedings which were pending on the date of initiation of the proceedings and the passing of the Order.

5. Resultantly, I dismiss this petition as infructuous but without any order as to costs.

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