IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1034 OF 2016

M/s. Electrotherm (India) Ltd. .... Petitioner
Vs.
The State of Maharashtra,
through the Commissioner of
Sales Tax .... Respondent

Mr. Sandeep Ghaterao with Mr. N.V. Tapare for the Petitioner.
Mr. V.A. Sonpal, Special Counsel, for the Respondent.

CORAM: S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

DATE : AUGUST 02, 2016

P.C:

1. On 2-2-2016, the Tribunal had before it an application for grant of stay against recovery of dues pending the disposal of VAT Appeal No.10 of 2016. The Vat Appeal was directed against an order of part-payment passed by the Deputy Commissioner of Sales Tax (Refund & Refund Audit-2), Mumbai, dated 16-12-2015. The said order was passed in a First Appeal which was filed by the appellant before it against the

Assessment Order dated 29-3-2013. In such proceedings, the First Appellate Authority fixed a part-payment in the sum of Rs.1,86,52,804/- and which, in the opinion of the Tribunal, is the basic tax, as against the confirmed demand raised by the Assessment Order of Rs.7,25,18,140/-, inclusive of tax, interest and penalty. Then, that requires no interference.

2. It is this conclusion of the Tribunal which is assailed in this writ petition under Article 226 of the Constitution of India. Mr. Sandeep Ghaterao, learned Advocate appearing for the petitioner, would submit that the Tribunal has omitted from consideration a very vital point and ground. The petitioner before this Court is a registered Public Limited Company, carrying on business from the State of Gujarat and having its branch office at Mumbai. It has a registered office in the State of Gujarat. It carries on business in stainless steel.

3. It is submitted that before the First Appellate Authority and the Tribunal it was not pointed out that the petitioner is a sick industrial company within the meaning of the

Sick Industrial Companies (Special Provisions) Act, 1985 (for short, “SICA”). On 26-2-2014, a communication was addressed to the Secretary of the Board for Industrial and Financial Reconstruction (BIFR), set up under the SICA. A reference under Section 15(1) of the SICA was forwarded in the prescribed Form-A along with all enclosures in six sets containing 1083 pages. That reference was duly registered. The Board had communicated the factum of registration by its communication dated 27-6-2014.

4. Along with that communication, the summary record of the proceedings of the hearing held on 9-9-2014 before the Bench of the Board is relied upon. It is submitted that Case No.29 of 2014 is the number assigned to this reference. The reference is still pending.

5. Our attention is invited to Sections 15, 16 and 22 of the SICA by Mr. Ghaterao. It is submitted that by sub-section (1) to Section 22, 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 shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.

6. When Mr. Ghaterao's attention was invited to a Judgment of the Hon'ble Supreme Court of India in the case of ***Deputy Commercial Tax Officer and others Vs. Corromandal Pharmaceuticals and others***, reported in AIR 1997 SC Page 2027, Mr. Ghaterao would submit that there is a further Judgment rendered in the case of ***Raheja Universal Limited Vs. NRC Limited and others***, reported in (2012) 4 SCC Page 148.

7. Our attention is also invited to a Judgment of the Hon'ble Supreme Court of India in the case of ***KSL and Industries Limited Vs. Arihant Threads Limited and others***, reported in (2015) 1 SCC Page 166. It is submitted that the recovery of taxes and particularly the sales tax is not permissible during the pendency of this Appeal. Therefore, there should be an unconditional stay of recovery. On the other hand, Mr.

Sonpal, appearing for the Revenue, submits that the view taken by the Supreme Court of India in the case of ***Corromandal Pharmaceuticals*** (supra) stands and is in no way distinguished or departed from and in that regard he relies upon the Judgment in the case of ***Raheja Universal Limited*** (supra).

8. After giving our anxious consideration to the submissions canvassed by both parties, we are of the view that instead of this Court going into these issues, for the first time and that too, at the stage of hearing of a stay application, interest of justice would be served if we allow this writ petition by quashing and setting aside the impugned order and restoring to the file of the Tribunal the stay application. Accordingly, the writ petition is allowed. The impugned order is set aside and the stay application is restored to the file for a fresh consideration by the Tribunal. It would be open for the petitioner to contend before the Tribunal that the petitioner is a sick industrial company, the reference is pending and the provisions of the SICA would protect it against any recovery by coercive means. The specific aspect of recovery of sales tax dues and that of this

Department from the petitioner is included in the proceedings before the BIFR. The arguments to the contrary of the Revenue and based on the legal provisions as referred above, can also be canvassed. The Tribunal shall consider them and pass an appropriate order in accordance with law, as expeditiously as possible and within a period of two months from the date of receipt of a copy of this order. We clarify that we have not expressed any opinion on the rival contentions. The writ petition accordingly stands disposed of.

(DR. SHALINI PHANSALKAR-JOSHI, J.) (S.C. DHARMADHIKARI, J.)