IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8593 OF 2005

Shree Marathwada Paper
Mills Pvt. Ltd.,
Through its Managing Director
Ashok Jagannath Patil,
Age : 45 years,
r/o. Village Rohital,
Tq. Georai, Dist. Beed ..Petitioner

Vs.

1. Asstt. Commissioner of Central
   Excise, Nanded District, Nanded
   Near Airport Road, Nanded

2. Commissioner of Central Excise,
   Town Center, CIDCO, Aurangabad

3. Union of India ..Respondent

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Mr.S.V.Dixit, Advocate for petitioner

Mr.D.S.Ladda, Standing Counsel for respondent nos.1 to 3

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CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.
DATE : JUNE 23, 2017

ORAL JUDGMENT *(PER T.V. NALAWADE, J.)*:

The petition is filed for the relief of quashing of the Attachment Panchnamas dated

06.04.2004, 14.09.2004 and 02.06.2005 in respect of properties of the petitioner, for recovery of the amount of excise duty which was demanded by the respondents.

2. The petition is filed on the ground that proceedings were filed by the petitioner with B.I.F.R. on 06.08.2006, contending that it was a sick industry. During pendency of the said proceedings, no action could have been taken. In the body of the present petition, it is expressed that the petitioner was ready to deposit the amount of Rs.17,58,950/- in installments.

3. This Court on 03.08.2007 granted interim relief in terms of prayer clauses 'D' and 'E'. Thus, the petitioner got a blanket protection. The respondents could not take further action due to the stay granted by this Court.

4. The submissions made and the record produced by the learned Counsel for the respondents

shows that the proceedings filed before the B.I.F.R. came to be disposed of on 08.05.2013. In an ordinary course, the action which was necessary for the petitioner, was to inform this Court about the disposal of the said proceedings before the B.I.F.R. No such step was taken by the petitioner. Today, the learned Counsel for the petitioner has argued a technical point that when the proceedings were pending before the B.I.F.R., the order of attachment could not have been made and so that, it may be set aside.

5. In view of the above, we observe that the demand of excise duty itself could have been challenged before the Tribunal, but that demand was not challenged and attachment order was challenged in this Court. When the demand order is still there, it cannot be called as an illegal at present and further when the petitioner had undertaken to make payment of the said amount in the present petition, which was to the effect that he

will deposit the amount by the end of December, 2005 and January, 2006, this Court is not expected to stay only the attachment order. The petitioner has virtually misused the process of law and the recovery was virtually stalled due the interim order passed by this Court.

6. The learned Counsel for the petitioner submits that the fact of disposal of the proceedings before the B.I.F.R., was not informed to him by his client. In our view, this cannot be a ground to adjourn the present petition or to give some more time to the petitioner.

7. In view of the above facts and circumstances of the case, this Court holds that the interim relief cannot be continued and present proceedings cannot be kept pending.

8. The Writ Petition stands dismissed. The interim relief granted earlier stands vacated.

9. The learned Counsel for the petitioner is not aware as to whether, his client has deposited the amount which was to be deposited by the petitioner as per the undertaking given in this Court.

10. This point is kept open and the respondent will consider the same.

[SANGITRAO S. PATIL, J.] [T.V. NALAWADE, J.]

kbp