(2010) 07 DEL CK 0224

In the Delhi High Court

Case No : C.E.A.C. No. 7 of 2008

Agarwal Metal Works Pvt. Ltd. APPELLANT

Vs

Deputy Commr., C. Ex., Jaipur RESPONDENT

Date of Decision : 12-07-2010

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11

Citation : (2011) 263 ELT 397

Hon'ble Judges : Reva Khetrapal, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Jyoti Mendirata, for the Appellant; R.K. Zavari and Amit Anand, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, J.—Admit.

2. The following substantial question of law is raised for consideration :

Whether the authorities below are justified in holding that the adjudication order passed against the defaulting company can be enforced against the appellant company which had only purchased its land and not any assets that would attract Central Excise Duty?

3. With the consent of the counsel for the parties, matter is also finally heard.

4. Facts in brief of the present appeal may be recapitulated first,

5. M/s. Aryavart Plywood Pvt. Ltd., Bhiwadi was the original owner of two plots of land bearing Nos. SP 144A & 144B located in Industrial Estate, Bhiwadi aggregating to 66400 Sq. Meters. There were certain dues payable by the said company to the Excise Department which were adjudicated upon way back in the year 1985. It seems that the original owner - owned certain amounts to the financial institutions as a result of which the aforesaid plots of land alongwith machinery etc. and business was taken over by the said financial institutions and

auctioned.

6. M/s. Zoravar Vanaspati Limited purchased SPL 144B measuring 25000 Sq. Mtrs. After sometime, M/s. Zoravar Vanaspati Limited sold that plot to the appellant here in vide conveyance deed dated 27-8-2002. This is how the appellant became the owner of the plot in question and after payment of full consideration for purchase of the said plot, it got physical vacant possession thereof. In the conveyance deed, it was mentioned that the said plot was free from all encumbrances and all outstandings including but not limited to taxes, developmental charges, ground rent, cesses, electricity and water charges till the date of signing and execution of this Deed had been fully paid and nothing was due and payable in this regard.

7. After some time, however, the Excise Department sent a letter to the appellant demanding the recovery of excise duty in the sum of Rs. 2,21,532/- which was payable by the original owner. As per the Excise Department, the appellant, purchaser of the land, was liable to pay the excise dues in connection to the demand of aforesaid amount from the appellant. Reference was made to the Judgment of the Supreme Court in Macson Marbles Pvt. Ltd. Vs. Union of India (UOI), . The appellant denied the liability by giving its reply to the notice of demand, followed by various representations. However, the Excise Department, Bhiwadi refused to give registration to the appellant under the Excise Act. In these compelling circumstances, the appellant was made to deposit the amount of Rs. 2,21,532/- under protest on 22-5-2004.

8. After the deposit of this amount, the appellant approached the Assistant Commissioner of Central Excise and Customs, Bhuvneshwar and requested for the refund of this amount, inter alia, on the plea that excise ''dues have to be paid by the purchaser of the property of the defaulter. In response to the show cause notice dated 10-12-2004 issued calling upon the appellant to explain as to why the request for refund of Rs. 2,21,532/- made be not rejected as it was the liability of the appellant which had purchased the land belonging to the original owner, to clear the said dues which were payable by the original owner. The appellant submitted its reply. However, the order-dated 28-1-2005 was passed by the Deputy Commissioner rejecting the request of the appellant. Appellant preferred appeal before the Commissioner, Central Excise & Customs (Appeal-I), Jaipur which was also rejected. Thereafter, the appellant approached the Customs, Excise & Service Tax, Appellate Tribunal, New Delhi. The Tribunal has also dismissed the appeal of the appellant vide orders dated 27-7-2007. Rectification application preferred by the appellant before the Customs, Excise & Service Tax, and Appellate Tribunal has not made any effect as that has also been dismissed on 4-3-2008.

9. The appellant has now approached this Court and by way of present appeal, challenged the orders dated 2-7-2007 and 4-3-2008 passed by the CEAC.

10. All the authorities below proceeded on the premise that it was the liability of

the purchaser of the land as well, to clear the dues. Learned counsel for the appellant submitted that no such principle of law is laid down by the Supreme Court in Macson Marbles (supra) that in every situation a person who purchases the land belonging to the previous owner would be liable to pay the dues belonging to the said previous owner. Learned counsel for the appellant drew the fine distinction in this behalf, arguing that what was decided in this case was that only in those case where the buyer had purchased the entire unit, he would be so liable. In the present case, on the contrary, the appellant had purchased only the plot and not the entire unit. It was also submitted that in the instant case there was an auction of the properties belonging to the original owner by the financial institution and, predecessor in the interest of the appellant namely M/s. Zoravar Vanaspati Limited purchased the said plot in the said auction without any condition of such a liability. In such a case, the appellant who has purchased the property from the said auction purchaser is a bona fide purchaser of the plot in question. Her submission was that in such a scenario judgment in the case of Union of India (UOI) and Others Vs. SICOM Ltd. and Another, , would be applicable where the Supreme Court distinguished all these aspects in detail and held that there cannot be any such liability on the subsequent purchaser.

11. Entire gamut of the case law was visited by the Division Bench of judgment of Punjab & Haryana High Court in T.C. Spinners Pvt. Limited v. Union of India reported as 2009 (243) E.L.T. 31 (P & H). After full discussion, the High Court deduced the following principles :

In the light of the above discussions, we conclude :-

(i) Generally, the dues to Government i.e. tax, duties etc., (Crown''s debts) get priority over ordinary debts.

(ii) Only when there is a specific provision in the statute ''claiming "first charge" over the property, the Crown''s debt is entitled to have priority over the claim of others.

(iii) Since there is no specific provision for claiming "first charge" in the Central Excise Department cannot have precedence over the claim of secured creditor viz., the petitioner Bank.

(iv) In the absence of such specific provision in the Central Excise Act as well as in Customs Act, we hold that the claim of secured creditor will prevail over Crown''s debits.

12. Thus, the principle of liability which culled out is that the subsequent purchaser cannot be fastened with the liability relating to the dues of the Government unless there is a specific provision in the statute, claiming "first charge for the purchaser". Insofar as Central Excise Act is concerned, there is no such specific leave. The SLP against the aforesaid judgment was also dismissed by the Supreme Court.

13. In view of the aforesaid categorical legal position, it is clear that the Excise

Department could not recover the amount of Rs. 2,21,532/- from the appellant which was the liability of the original owner, simply because the appellant bought the piece of a land.

14. The learned counsel for the respondent however submitted that there was a specific provision in the Central Excise Act 1944 as well as in the Central Excise Rules. In this behalf he referred to the proviso to Section 11. This proviso is added by way of amendment in the Act only with effect from 10-09-2004. This proviso incorporates the same language of Rule 230. These provisions would not be applicable in the given case, as is clear from the language of Rule 230 of Excise Rules :

RULE 230. Goods, plant and machinery chargeable with duty not paid. - (1) When the duty leviable on any goods is owning from or by any person carrying on trade or business, whether as a producer, manufacturer or as dealer in such goods, all excisable goods, and all materials and preparations, from which any such goods are made, and all plant, machinery, vessels, utensils, implements and articles for making or manufacturing or producing any such goods, or preparing any materials, or by which the trade or business carried on in the custody or possession of the person carrying on such trade or business, or in the custody or possession of any agent or other person in trust for or for the use of the person carrying on such trade or business, may be detained for the purpose of exacting such duty; and any officer duly authorized by general or special order of the Central Board of Excise and Customs or the (Commissioner) may detain such goods, materials, preparations, plant, machinery, vessels, utensils and articles until such duties or any sums recoverable in lieu thereof are paid or recovered.

(2) Where any such person transfers or otherwise dispose of his business in whole or in part, or effects any change in the ownership thereof in consequence of which he is succeeded in the business or trade or part thereof by any other person or person, all excisable goods, materials, preparations, plat, machinery, vessels, utensils, implements and articles in the custody or possession of the person or persons succeeding may also be detained for the purpose of exacting duty due from the producer, manufacturer or dealer upto the time of such transfer, disposal or change, whether such duty has been assessed before such transfer, disposal or change, but has remained unpaid, or is assessed thereafter.

15. We accordingly hold that the appellant was not liable to pay the dues of Excise Department in respect of which primary liability was that of M/s Aryavat Plywood Pvt. Ltd. This appeal is accordingly allowed and the impugned orders passed by the CESTAT are set aside. The respondents shall refund the aforesaid amount of Rs. 2,21,532/- along with interest payable under the Act within eight weeks from the receipt of the copy of this order. The appellant shall also be entitled to cost quantified at Rs. 5000/-.