
(2014) 03 GUJ CK 0075
In the Gujarat High Court
Case No : Tax Appeal No. 93 of 2014

Commissioner

APPELLANT

Vs

Sachin Dyeing and Printing (P.) Ltd.

RESPONDENT

Date of Decision : 06-03-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11

Citation : (2014) 44 GST 647

Hon'ble Judges : Sonia Gokani, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : R.J. Oza, Advocate for the Appellant

Judgement

Sonia Gokani, J.—Following substantial question of law are proposed for our consideration by the Revenue challenging the order of Customs, Excise & Service Tax Appellate Tribunal ("C.E.S.T.A.T." hereinafter) dated 1.7.2013: Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law in exonerating the respondent from liability of payment of Government dues in the capacity of successor of Shree Vaishnavi Dyeing & Printing Mills Pvt. Ltd. in terms of proviso to section 11 of the Central Excise Act, 1944?

We have heard senior counsel Shri R.J. Oza for the Revenue and with his assistance examined the material on record. 2. Brief facts for the purpose of adjudication are as follows:

2.1 M/s. Vaishnavi Dyeing & Printing Mills Ltd. which was engaged in manufacturing of Man Made Fabrics, had not paid the central excise duty as provided under the law. The show cause notice was issued and the same was adjudicated by the competent authority. No appeal was filed against such order. On its failing to pay the total outstanding dues of Rs. 16.91 lakhs (rounded off) with interest, procedures for attachment and sale of moveable property for recovery of such arrears of Revenue were undertaken.

2.2 M/s. Vaishnavi Dyeing & Printing Mills Ltd. also was indebted to Gujarat Industrial Investment Corporation Ltd. ("G.I.I.C." for short) and for the recovery of its dues, G.I.I.C. had auctioned the factory located at G.I.I.D.C., Sachin, Surat along with plant and machinery owned by M/s. Shree Vaishnavi Dyeing and Printing Mills Ltd.

2.3 The respondents purchased such factory along with land, building, plant and machinery from the proceeds of auction from the G.I.I.C. A show cause notice was issued on 16.2.2006 for the recovery of the said outstanding dues of Rs. 16.91 lakhs with interest and attachment of property u/s 142(1)(c)(ii) also was contemplated under the notice. On availing the opportunity to the respondent, the Assistant Commissioner concluded that purchase was made from G.I.I.C. on "as is where is basis" and for the default of earlier unit, the amount was required to be recovered from the respondent.

2.4 Aggrieved by such order-in-original, the respondent preferred appeal before the Commissioner (Appeals), Central Excise and Customs which concurred with the order-in-original and dismissed the appeal.

2.5 Aggrieved respondents when preferred appeal before the C.E.S.T.A.T., it held in favour of the respondent and against the Revenue. Therefore, the present appeal challenging such order by proposing the aforementioned question of law.

3. We notice that the emphasis on part of the Revenue is to clause in sale deed and all through out it insisted that as assets are sold on "as is where is basis" by the vendor to the purchaser, such outstanding dues are required to be paid by the respondent. The tribunal by exhaustive discussion, relying on the decision of Bombay High Court in case of Krishna Lifestyle Technologies Ltd. held in favour of the assessee.

4. We notice that the issue is no longer res Integra The Apex Court in case of Rana Girders Ltd. Vs. Union of India (UOI) and Others, , was considering the question where the assessee defaulted on loan to State Financial Corporation and auction sale of the unit took place. The properties were sold free from all encumbrances but the same had a stipulation that "all these statutory liabilities arising out of the land shall be borne by purchaser in the sale deed and "all these statutory liabilities arising out of the said properties shall be borne by the vendee and the vendor shall not be held responsible in the agreement of sale." The Court discussing various earlier pronouncements on the subject held that where buyer had purchased entire business, he would be liable for central excise duty. Otherwise, buyer could not be fastened with liability relating to dues of Government in absence of any specific statutory provision stipulating "first charge for the purchaser". The Apex Court held as under:

21. A harmonious reading of the judgments in Macson and SICOM would tend us to conclude that it is only in those cases where the buyer had purchased the entire unit i.e. the entire business itself, that he would be responsible to discharge the liability of Central Excise as well. Otherwise, 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". As far as Central Excise Act is concerned, there was no such specific provision as noticed in SICOM as well. Proviso to Section 11 is now added by way of amendment in the Act only w.e.f. 10.9.2004. Therefore, we are eschewing our discussion regarding this proviso as that is not applicable in so far as present case is concerned. Accordingly, we thus, hold that in so far as legal position is concerned, UPFC being a secured creditor had priority over the excise dues. We further hold that since the appellant had not purchased the entire unit as a business, as per the statutory framework he was not liable for discharging the dues of the Excise Department.

22. With this, we now revert to the first issue, namely interpretation of the clause in the Sale Deed for land and building and similar clause in Agreement of Sale for machinery on the basis of which appellant is held to be liable to pay the dues. These clauses have already been incorporated in the earlier portion of our judgment.

23. We may notice that in the first instance it was mentioned not only in the public notice but there is a specific clause inserted in the Sale Deed/Agreement as well, to the effect that the properties in question are being sold free from all/oil encumbrances. At the same time, there is also a stipulation that "all these statutory liabilities arising out of the land shall be borne by purchaser in the sale deed" and "all these statutory liabilities arising out of the said properties shall be borne by the vendee and vendor shall not be held responsible in the Agreement of Sale." As per the High Court, these statutory liabilities would include excise dues. We find that the High Court has missed the true intent and purport of this clause. The expressions in the Sale Deed as well as in the Agreement for purchase of plant and machinery talks of statutory liabilities "arising out of the land" or statutory liabilities "arising out of the said properties" (i.e. the machinery). Thus, it is only that statutory liability which arises out of the land and building or out of plant and machinery which is to be discharged by the purchaser. Excise dues are not the statutory liabilities which arise out of the land and building or the plant and machinery. Statutory liabilities arising out of the land and building could be in the form of the property tax or other types of cess relating to property etc. Likewise, statutory liability arising out of the plant and machinery could be the sales tax etc. payable on the said machinery. As far as dues of the Central Excise are concerned, they were not related to the said plant and machinery or the land and building and thus did not arise out of those properties. Dues of the Excise Department became payable on the manufacturing of excisable items by the erstwhile owner, therefore, these statutory dues are in respect of those items produced and not the plant and machinery which was used for the purposes of manufacture. This fine distinction is not taken note at all by the High Court.

24. We thus conclude that the judgment of the High Court is unsustainable in

law. Accordingly, the appeal is allowed and the impugned judgment of the High Court is set aside. As a consequence the notice of the Excise Department calling upon the appellant to pay the dues of the erstwhile owner of the unit in question also stands quashed. The appellant shall also be entitled to cost of this appeal.

5. In light of the discussion, we see no reason to interfere in the conclusion deduced by the tribunal, which has rightly interpreted the provisions of law and also applied the decisions to the facts in the instant case. Here also it is not the case of the Revenue that the purchaser had purchased the entire business. He purchased only the land and plant and machinery. Resultantly, this tax appeal is dismissed.