(2016) 01 GUJ CK 0039

In the Gujarat High Court

Case No : Special Civil Application No. 20970 of 2015

Drm Technology Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Citation : (2016) 334 ELT 216

Hon'ble Judges : Akil Kureshi and Mohinder Pal, JJ.

Bench : Division Bench

Advocate : Manan V. Bhatt, Advocate, for the Petitioner; Y.N. Ravani, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Akil Kureshi, J.(Oral)—Leave to amend.

2. Heard learned advocates for the parties for final disposal of the petition.

3. Petitioners have challenged an order dated 26-11-2015 under which the Deputy Commissioner of Central Excise, Bharuch cancelled the Central Excise registration of the petitioner. Operative portion of the order reads as under :

"The Central Excise Registration bearing No. AADCD7976JEM002, issued online through ACES, is hereby cancelled/revoked/suspended under the provisions of Section 6 of Central Excise Act, 1944 read with Rule 9 of Central Excise Rules, 2002 and sub-para 3.2 of Para 3 of Chapter 2 of CBEC?s Central Excise Manual of Supplementary Instructions 2005".

4. Petitioner No. 1 is a company registered under the Companies Act and is engaged in manufacturing of filters and filtration systems falling under Chapter 84 of First Schedule of Central Excise Tariff Act, 1985. The petitioner No. 1-Company purchased land from M/s. Saj Bio Fules Pvt. Ltd. (herein after referred to as ?erstwhile owner?) through a registered sale-deed dated 28-9-2011.

5. The petitioners applied online and obtained provisional registration under the

Central Excise Act to carry out manufacturing activity at the site. The Department, however, on the premise that the erstwhile owner of the land had obtained Central Excise registration which was not cancelled and had unpaid Government dues of Rs. 8.50 lacs (rounded off), issued show cause notice to the petitioners on 4-9-2015 why the registration should not be cancelled. One of the main grounds pressed in service was that the erstwhile owner had outstanding Government dues of Rs. 8.39 lacs. It was also alleged that upon site inspection, the Excise Officers found that there was no plant or machinery available at the site for the purpose of production. Principally on these two grounds, petitioners were called upon to show cause why such registration should not be cancelled.

6. Petitioners opposed such show cause notice and also appeared for personal hearing before the adjudicating authority. However, by the impugned order, the authority cancelled registration upon which the present petition has been filed.

7. In response to notice issued, respondents have appeared and filed reply. Main stand taken in the reply pertains to continued registration and the outstanding dues of Rs. 8.39 lacs of the erstwhile owner though absence of plant and machinery on the site is also referred to. Learned counsel for the Excise Department could not dispute that for the purpose of mere registration under Central Excise Act, it is not necessary that the manufacturing unit should be fully operational. The sole surviving issue would be the objection of the department regarding continued registration and outstanding dues of the erstwhile owner.

8. Regarding this issue, learned counsel for the petitioner placed reliance on following decisions :

(i) In the case of Surat Metallics Ltd. and Anr. v. Commissioner of Central Excise and Anr. reported in (2011) 2 GLR 1404 = 2014 (306) E.L.T. 558 (Guj.);

(ii) Judgment SCA No. 5193 of 2009 2014 (311) E.L.T. 11 (Guj.) in case of M/s. Jahaan Steel Ltd. v. Union of India and Others.

(iii) In the case of Jagdish Enterprise P. Ltd. and Others v. Union of India and Others reported in 2014 (1) GLH 541 = 2014 (306) E.L.T. 381 (Guj.).

9. It is not necessary to refer all these decisions at length. In case of Jagdish Enteprise (supra), referring two earlier decisions, the Division Bench held and observed as under :

25. Now, so far as the action of the respondents authority in denying the Registration Certificate to the petitioner No. 3 on the ground that Registration Certificate with respect to the very property in question being Plot Nos. 548 and 549, GIDC Estate, Vaghodia, Vadodara issued in favour of erstwhile owner - Plot Nos. 548 and 549, GIDC Estate, Vaghodia, Vadodara, is still not cancelled and/or de-registered and there are Central Excise dues of the erstwhile owner - M/s. Jem Ispat Ltd. and therefore, Registration Certificate cannot be granted in favour of the petitioner No. 3 - subsequent purchaser for the very property, is concerned as such the said issue is squarely covered by the decision of the

Bombay High Court in the case of TATA Metalinks Ltd. (supra) and unreported decision of this court in the case of Surat Metallics Ltd. (supra) and in the matter of M/s. Jahaan Steel Ltd. (supra) and decision in the case of Prelude Laminates Pvt. Ltd. in Special Civil Application No. 11619 of 2000. In the case of TATA Metalinks Ltd. (supra), Bombay High Court has distinguished the decision of the Bombay High Court in the case of Manibhadra Processors (supra), the decision relied upon by the learned counsel appearing on behalf of the respondents and the Bombay High Court in the case of TATA Metalinks Ltd. (supra) in paras 5 and 6 has considered and dealt with in extenso Section 6 of the Central Excise Act and Rule 9 of the Central Excise Rules, by observing in para 5 and 6 as under:-

5. We shall first consider the issues in Writ Petition No. 759 of 2006 in the matter of registration of the establishment of the petitioners.

Section 6 of the Central Excise Act reads as under :

6. Registration of certain persons. - Any prescribed person who is engaged in-

(a) the production of manufacture or any process of production or manufacture of any specified goods included in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), or

(b) the wholesale purchase or sale (whether on his own account or as a broker or commission agent) or the storage of any specified goods included in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).

In terms of the Act therefore, a person who is engaged in the occupation or manufacture or in the process of production of specified goods included in the first schedule and second schedule to the Central Excise Tariff Act, 1985 or the wholesale purchase or sale (whether on his own account or as a broker or commission agent) or the storage of any specified goods included in the First Schedule and the Second Schedule) the Central Excise Tariff Act, 1985 (5 of 1986), must get himself registered with the proper officer.

The next relevant provision is Rule 9 of the Central Excise Rules which reads as under :

Rule 9. Registration. - (1) Every person, who produces, manufactures, carries on trade, holds private store-room or warehouse or otherwise uses excisable goods, shall get registered;

Provided that a registration obtained under Rule 174 of the Central Excise Rules, 1944 or Rule 9 of the Central Excise (No. 2) Rules, 2001 shall be deemed to be as valid as the registration made under this sub-rule for the purpose of these Rules.

(2) The Board may by notification and subject to such conditions or limitations as may be specified in such notification, specify person or class of persons who may not require such registration.

(3) The registration under sub-rule (1) shall be subject to such conditions, safeguards and procedure as maybe specified by notification by the Board.

Sub-rule (3) of Rule (9) contemplates that the registration shall be subject to the conditions as specified by Notification by the Board. The Board has issued notification under Rule 9. The perusal of the said notification, requires compliance of the following :

(a) An application by every person specified under Sub-rule (1) of Rule (9) for registration.

(b) If the person has more than one premises requiring registration, separate registration certificate shall be obtained for each of such premises.

(c) Where a registered person transfers his business to another person, the transferee shall get himself registered afresh.

(Emphasis supplied)

(d) Every registered person, who ceases to carry on the operation for which he is registered, shall de-register himself by making a declaration in the form specified in Annexure III and depositing his registration certificate with the Superintendent of Central Excise.

These are some of the requirements as set out under the rules.

A combined reading therefore, of Section 6 of the Act read with Rule 9 as also the notification shows that the registration must be by the "Person".

Our attention is however, invited to the judgment of this Court in Manibhadra Processors v. Additional Commissioner of C. Ex. - 2005 (184) E.L.T. 13 (Bom.) to contend that if there be an earlier holder of the registration certificate who has not paid the outstanding excise duties and fails to surrender registration certificate with respect to the same factory premises, no other unit in the same premises can be registered under the Rules unless earlier registration is de-registered or cancelled or surrendered by such registrant and all excise dues are cleared. On behalf of the Revenue, the learned Counsel has relied on this judgment to contend that in the instant case, there is a subsisting registration in favour of Respondent No. 7, Usha pat and once there be registration in their favour, the Registrar was right in rejecting or returning the application for registration made by the Petitioner herein.

Let us consider the ratio of the said judgment. On a reading of the said judgment, the following facts emerge. There was a company known as Ludhiana Woollen and Silk Mills Pvt. Ltd. who were owners of the premises. They firstly leased out the premises on rent to M/s. Swastik Dyeing and Printing Mills Limited who had obtained excise registration on 1-10-1996 and failed to clear their dues. Subsequent thereto, M/s. Ludhiana Woollen and Silk Mills Pvt. Ltd. leased out the very same premises to M/s. Jagruti Textile Processors who also defaulted in payment of dues and did not surrender the registration certificate. The application of Manibhadra Processors was refused on the ground that Jagruti Textiles have not paid their outstanding dues and failed to surrender their registration certificate. It appears as per the facts on record that Ludhiana Woollen and Silk Mills Pvt. Ltd. has been indulging in the act of systematic induction of difference licensees in the very premises and helping them to defraud the central excise dues. It is on these facts, that the learned Bench of this Court was pleased to hold that if one person is having more than one premises, considering the language of the rule and the notification, then he must obtain separate registration certificate for each premises and as such the registration is always in respect of "particular premises" and not with respect to a particular person. Relying on the notification issued by the Board, the court held that the intention appears to be to prevent successive registration in respect of the same premises. If that be so, one and the same premises cannot be registered in the name of two different persons. The court proceeded to hold that the person holding earlier registration certificate must surrender registration certificates in respect of that premises, then only a new person can get registration in respect of that premises. From the facts, it will be clear that earlier though M/s. Swastik were in arrears fresh registration was granted in favour of M/s. Jagruti Textile Processors. The court found on the facts therein that there was a systematic attempt to evade tax dues and it is in these circumstances that the court was pleased to take the view which it has is taken. The person who owned the premises was the same but was inducting various licencees who had defaulted in payment of their dues. The judgment will have to be restricted to the facts of that case.

26. The Division Bench of this Court in the case of Surat Metallics Ltd. (supra) had an occasion to consider the similar issue with respect to non-issuance of Registration Certificate in favour of subsequent purchaser and had occasion to consider the decision of the Bombay High Court in the case of TATA Metalinks Ltd. (supra) and the Division Bench in the case of Surat Metallics Ltd. (supra) in paras 28 and 29 has observed and held as under:-

Though not expressly stated in the order refusing registration, before the Court, on behalf of the respondent No. 1, it has been contended that premises can be registered under the Central Excise Act only in relation to one person; that the defaulter M/s. Veenutex Dyeing & Printing Mills Pvt. Ltd. having already been registered in relation to the subject premises, unless such registration is revoked and cancelled, registration cannot be granted to the petitioners in relation to the said property. Attention was invited to notification No. 35/2001-C.E. (N.T.), dated 26th June, 2001 as amended from time to time, issued in exercise of powers under rule 9 of the Central Excise Rules, 2001 which provides for the conditions, safeguards and procedures for registration and exemption in specified cases. Reference was made to clause (2) thereof which says that if the person has more than one premises requiring registration, separate registration certificate shall be obtained for each of such premises; clause (4) thereof which says that where a registered person transfers his business to another person, the transferee shall get himself registered afresh as well as clauses (6) and (7) thereof which provide for de-registration and revocation or suspension of registration, to submit that on a conjoint reading of the said clauses it is apparent that unless registration in relation to the same premises granted to another person is revoked, no registration can be granted to another person in respect of the same unit as two persons cannot be simultaneously registered in respect of the same premises. In support of the said contention, the learned counsel had placed reliance upon a decision of the Bombay High Court in the case of Manibhadra Processors v. Additional Commissioner of Central Excise (supra) wherein it has been held that one and the same premises cannot be registered in the name of two different persons. That person holding earlier registration certificate must surrender registration certificate in respect of that premises, then only can a new person get registered in respect of that premises. However, on behalf of the petitioners, reliance had been placed upon a decision of the Bombay High Court in the case of Tata Metalliks Ltd. v. Union of India and Others, 2009 (234) E.L.T. 596 (Bom.) wherein the Court after considering the provisions of section 6 of the Act, Rule 9 of the Central Excise Rules, and the notification issued thereunder, has inter alia held thus :

A perusal of Section 6 makes it absolutely clear that who has to be registered is the prescribed person. Under the rules also, it is the person who has to get registered. The notification in Clause (2) only sets out that if such registered person has more than one premises, then each of such separate premises would require registration certificate for each of such premises. In other words, it is the person who has to obtain separate registration certificate for each of the said premises. It is open to a person who has ceased to carry on the business to apply for de-registration. Would that mean in the absence of the person who has closed or sold the business or premises, applying for de-registration, there is no jurisdiction to grant another person registration of the premises as in the case of a bona fide transferee for value or for that to the owner of the premises whose lessee has defaulted in payment of excise dues. Section 6 and Rule 9 and the notification contemplates that it is the person who must be registered. Neither Section 6 nor Rule 9 and the Notification is a provision for enforcing the claim for dues of the department. That is contained in different provisions. An immovable property by itself cannot be sold unless the owner of the premises is defaulter and that too under a certificate as arrears of land revenue. That sale would be subject to the priority of claims. In case of a lease hold property given for a particular period, there would be no question of sale of the property except the limited interest. In our opinion, the case of bona fide transferee was not in issue in the case of M/s. Manibhadra Processors (supra) or the instances we have cited above. The Respondent No. 3 has therefore, clearly acted without jurisdiction in refusing to grant registration on the specious plea that M/s. Usha Ispat whose assets has been sold and purchased by the petitioners has not applied for de-registration. In the absence of a specific power to deny registration, the alternate would be whether there would be implied power. Neither Section 6 or Rule 9 or for that matter the notification confers such power. The right of revenue however, would subsist for recovery of dues both against the defaulter or the transferee if the predicates for recovery are met. An incidental aspect of the matter would be if the licence is for a particular period, on expiry of that period, the registration certificate would cease to be operative. In such cases, there would be no question of cancelling the certificate of registration.

This Court is in agreement with the aforesaid view expressed by the Bombay High Court and as such, is of the opinion that merely because the defaulter unit, though it had ceased to carry on business on the premises in question, had failed to apply for de-registration, the same should not, in any manner, come in the way of the petitioners in obtaining central excise registration in respect of the premises in question. The stand adopted by the respondent authority that in respect of the same premises, two persons cannot be registered being contrary to the provisions of law, cannot be accepted.

27. The aforesaid decision of the Division Bench in the case of Surat Metallics Ltd. (supra) has been subsequently followed by another Division Bench of this Court in the case of M/s. Jahaan Steel Ltd. (supra) and a similar view has been taken.

10. In view of such consistent view taken by this Court, stand of the Department cannot be accepted.

11. Under the circumstances, impugned order dated 26-11-2015 is quashed. Resultantly, the Central Excise Registration of the petitioner would be revived and restored. It is clarified that if the Department has any doubt about the actual manufacturing activity at the site, it is always open for the Department to examine the issue from the angle of any other provisions of the Central Excise law. Petition is allowed and disposed of accordingly.