(2014) 12 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5340 of 2007

Gopal Agarwal APPELLANT

Vs

The Commissioner of Customs and Central Excise and Others RESPONDENT

Date of Decision : 29-12-2014

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

Citation : (2015) 3 ALD 451 : (2015) 4 ALT 570 : (2015) 324 ELT 62 : (2015) 33 GSTR 479

Hon'ble Judges : L.N. Reddy, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : D.V. Nagarjuna Babu, Advocates for the Appellant; V. Gopalakrishna Gokhaley, Advocates for the Respondent

Judgement

L.N. Reddy, J.—The 3rd respondent herein i.e. Citi Union Bank Limited, through its Rani Gunj Branch, extended loan to an industry, by name, M/s. J.T. Alloys (P) Limited. The industry, however, became sick and it was unable to repay the loan. Proceedings were initiated against the industry for recovery of loan. The mortgaged property was attached, and on 27.03.2006, it was brought to sale. The petitioner emerged as the highest bidder in the sale for a sum of Rs. 1,12,50,000/-. On being satisfied that the conditions are complied with, the 3rd respondent executed sale deed, dated 22.04.2006. The possession of the property was also delivered to the petitioner.

2. On 06.02.2007, the 1st respondent issued a notice to the petitioner under Section 11-AA and 11-AB of the Central Excise Act. It was stated that the industry i.e. J.T. Alloys Limited, is in arrears of excise duty to the tune of Rs. 39,26,030/- and that being the purchaser of property of the industry, the petitioner is liable to pay the same. The petitioner submitted explanation on 19.02.2007. Not satisfied with that, respondents 1 and 2 proceeded to attach the property. Hence, this writ petition.

3. Heard Sri D.V. Nagarjuna Babu, learned counsel for the petitioner and Sri

Gopalakrishna Gokhaley, learned counsel for respondents 1 and 2.

4. It may be true that the industry, which fell sick, was in arrears of excise duty and respondents 1 and 2 were entitled to take steps for recovery of the same. In a given case, the Central Excise Department is entitled to proceed against the movable or immovable property of the manufacturer for recovery of the arrears of duty. In the instant case, however, the only basis on which respondents 1 and 2 sought to proceed against the petitioner was that it purchased the property of the industry. The purchase was not the result of a voluntary transfer by the industry. It was in the course of recovery of loan, that the property came to be sold and it was rather incidental, that the petitioner emerged as the highest bidder. Things would have been different altogether, had the sale in favour of the petitioner taken place after the department has attached that very property for recovery of arrears of duty. That, however, is not the case. It is only after the sale in favour of the petitioner became the absolute and the property vested in them free from any encumbrances, that respondents 1 and 2 initiated proceedings for recovery of arrears of duty and sought to attach the property.

5. The question as to whether the purchaser of a property from an entrepreneur or industry would be liable to pay the arrears of excise duty, electricity charges and the like; is no longer res Integra. A Division Bench of this Court in Sitani Textiles and Fabrics (P) Ltd Vs. Asst. Collector of Customs and Central Excise, Hyderabad and Another, held that a purchaser of a property of an industry in an auction, conducted for recovery of loans, cannot be mulcted with the liability to pay the arrears of excise duty. S.L.P. filed against it was dismissed. Recently, in its judgment, in Union of India (UOI) and Others Vs. SICOM Ltd. and Another, , the Hon''ble Supreme Court approved the said principle and the same was followed in Rana Girders Ltd. Vs. Union of India (UOI) and Others, .

6. Another aspect is that in respect of the very property purchased by the petitioner, steps were initiated by the electricity supplier for recovery of arrears of the electricity charges. The petitioner filed W.P. No. 3452 of 2007. This Court allowed the writ petition through order, dated 23.02.2007. It is stated that the said order was affirmed by a Division Bench in the writ appeal. Viewed from any angle, we do not find any basis for the respondents to proceed against the petitioner.

7. Hence, the writ petition is allowed, setting aside the proceedings initiated against the petitioner. It is, however, left open to respondents 1 and 2 to take any other steps permissible in law for recovery of arrears of excise duty in question. There shall be no order as to costs.

8. The miscellaneous petitions filed in this writ petition shall also stand disposed of.

