(1994) 06 GUJ CK 0001

In the Gujarat High Court

Gujarat State Textile Corporation APPELLANT

Vs

Collector of Central Excise and Others RESPONDENT

Date of Decision : 30-06-1994

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11

Citation : (1994) 2 GLR 1724

Hon'ble Judges : Rajesh Balia, J;A.P. Ravani, J

Bench : Division Bench

Judgement

R. Balia, J.—All the four petitions are by the Gujarat State Textile Corporation (hereinafter referred to as Corporation) in respect of different textile units taken over and vested in the Corporation uer the Gujarat Closed Textile Undertakings (Nationalisation) Act, 1986 (Act No. 10 of 1986) or the Gujarat Sick Textile Undertakings (Nationalisation) Act, 1986 (Act No. 25 of 1986). The sole question raised in these petitions is that whether the Collector of Central Excise could direct recovery of excise duty due from the erstwhile textile units for the period before the same were vested in the Corporation. As common question of law has arisen in all the four matters, the same are being disposed of by this common judgment and order.

2. Brief facts which are necessary and relevant for the purpose may be stated in respect of each one of the petitions:

Special Civil Application No. 3237 of 1986:

This petition relates to excise duty recoverable from M/s. Ahmedabad Cotton Manufacturing Company Limited. The assets of the said Company are vested in the Corporation under Act 10 of 1986 with effect from January 1, 1986. By communication dated 11-5-1984 excisable goods were detained for non-payment of excise duty under Rule 230 of the Central Excise Rules, 1944, while the goods were in possession of the original owner. However, recovery could not be effected. After the commencement of Act No. 10 of 1986 and vesting of all the assets of Ahmedabad Cotton Manufacturing Company Limited with the Corporation, the excise authorities desired to make recovery of all the dues upto the date of vesting of assets of the erstwhile Company from the Corporation. Hence this petition by the Corporation. S.C.A. No 2541 of 1986:

This petition relates to the excise duty recoverable from M/s. New Swadeshi Mills, Ahmedabad for the period prior to the vesting of assets of the said Company in the Corporation with effect from 1-1-1986 under the Act No. 10 of 1986. The excise authorities are seeking to enforce recovery against the Corporation.

S.C.A. No. 712 of 1987:

This relates to Shree Shubhalaxmi Mills Limited, assets of which were acquired and vested in the Corporation under the Act No. 25 of 1986 with effect from 1-1-1986. In this case, excise duty which was outstanding against Shree Shubhalaxmi Mills Ltd. for the period prior to 1-1-1986 is sought to be recovered from the Corporation. S.C.A. No. 713 of 1987:

In this case the dues involved are of Priyalaxmi Mills Ltd., Baroda for the period prior to 1-1-1986 which are sought to be enforced against the Corporation.

3. The Learned Counsel for the petitioners urges that in view of the clear provisions of Section 5(1) read with Section 4(2) of the Act No. 10 of 1986 which are in pari materia provision of Act No. 25 of 1986, the assets of the original companies have vested in the Corporation free from all encumbrances and the liabilities existing against the original companies before the appointed day, viz., 1-1-1986 have not been taken over by the Corporation. Under the provisions of the Act, the Corporation is not liable for any sum which was due from the original company prior to the appointed day.

4. The Learned Counsel for the respondents urges that the Corporation being a successor to the companies nationalised, it is under an obligation to discharge the liabilities of the companies to which it has succeeded if the same are covered by the liabilities to be discharged by it as provided under Schedule II annexed to the Act. According to him recovery of excise duty is amongst dues to be paid off by the Corporation in terms of Schedule II. He places reliance on the provisions of Section 11 of the Central Excises and Salt Act, 1944 read with Rules 49 and 230 of the Central Excise Rules.

5. Having carefully considered the rival contentions, we are of the opinion that the petitions merit acceptance. Present is not the case of transmission of assets by succession or transfer by voluntary act of parties. It is a case of compulsory acquisition of the undertakings and its assets by Act of legislation on payment of compensation. Therefore, the nature of acquisition and rights and liabilities of the acquirer of the assets are governed by the provisions of the Act under which the assets have been acquired. It will be appropriate to refer to relevant provisions of the Act.

4. (1) The specified textile undertaking referred to in Section 3 shall be deemed to include all assets, lights, leaseholds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, reserve funds, investments and book debts and all other rights and interests in, or arising out of, such property as were immediately before the appointed day in the ownership, possession, power or control of the owner of the specified textile undertaking, whether within or outside India, and all books of account, registers and all other documents of whatever nature relating thereto.

(2) All property as aforesaid which has vested in the State Government under Sub-section ( ) of Section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting it, and any attachment, injunction or decree or order of any Court restricting the use of such property in any manner shall be deemed to have been withdrawn.

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5. (1) Every liability of the owner of the specified textile undertaking in respect of any period prior to the appointed day, shall be the liability of such owner and shall be enforceable against him and not against the State Government or the Corporation. (2) For the removal of doubt, it is hereby declared that -

(a) save as otherwise expressly provided in this section or in any other section of this Act, no liability in relation to the specified textile undertaking in respect of any period prior to the appointed day, shall be enforceable against the State Government or the Corporation;

(b) no liability of the specified textile undertaking or any owner thereof for the contravention, before the appointed day, of any provision of law for the time being in force, shall be enforceable against the State Government or the Corporation.

It is clear from the provisions of Sections 4 & 5 of the Act that the properties acquired and vested in the Corporation are free from all encumbrances and the legislation is unequivocal in its declaration that every liability of the owner of the textile undertaking acquired under the Act in respect of any period prior to the appointed day shall be the liability of such owner and shall be enforceable against him and not against the State Government or the Corporation.

6. In view of this clear provision of the enactment, we have no hesitation in upholding the contention of the Learned Counsel for the petitioners that the Corporation is not liable for any liability incurred by the acquired undertaking prior to the appointed day and recoveries of the same cannot be enforced against the Corporation or its assets except to the extent and in the manner provided under the said Act.

7. We may clarify that this does not mean that any dues against the undertaking acquired are irrecoverable. If the dues against the acquired undertaking are of the nature falling within the priority referred to in Section 7 of the Act and the Schedule, the same may be discharged in the manner provided in the Act and to the extent of the compensation because that provides that out of the compensation certain debts will be paid off in accordance with the priorities and to that extent the amount of compensation payable.

8. Our aforesaid conclusion is fortified by a Division Bench judgment of this Court, to which one of us was a party, rendered in Special Civil Application No. 2071 of 1992 decided on May 7, 1992 wherein after referring to the provisions of Act No. 10 of 1986 and the question arisen in respect of the provident fund dues outstanding for the period prior to 1-1-1986 in respect of Kanti Cotton Mills Pvt. Limited, it is held as under:

In view of the aforesaid provisions, it is clear that for the dues of the Kanti Cotton Mills Pvt. Ltd. the petitioner herein, i.e., G.S.T.C. cannot be held liable. It is an admitted position that the dues in respect of which the show cause notice has been issued and the ultimate order has been passed relates to the period prior to the appointed day. Appointed day, i e, January 1, 1986 while the dues are of the period March 1965 and for the year 1980.

In view of this factual position and in view of the aforesaid provisions of law as stated hereinabove recovery proceedings cannot be held against the petitioner.

9. For the aforesaid reasons, the petitions are allowed. The respondents are directed not to proceed further against the petitioner-Corporation for the recovery of the amount of excise duty payable by the erstwhile owners of the undertakings for the period prior to the appointed day, i.e., 1-1-1986 under the provisions of Excise Act. Rule made absolute accordingly. There will be no order as to costs.