(2011) 12 GUJ CK 0051

In the Gujarat High Court

Case No : Special Civil Application No. 21518 of 2007

Manibhadra Fine Trade Services APPELLANT

Vs

Chief Commissioner of Central Excise and Others RESPONDENT

Date of Decision : 08-12-2011

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11

Citation : (2011) 12 GUJ CK 0051

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

Bench : Division Bench

Advocate : Bharat T Rao for Petitioners 1, for the Appellant; Y.N. Ravani for Respondents 1 - 3 and Mr S.S. Panesar for Respondents 3, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice Akil Kureshi

1. Petitioner has prayed for quashing and setting aside themutation entry in the revenue records i.e. village formNo.7/12, in land bearing survey No.109/3 paike of villageSanand. The said entry records charge of the Central ExciseDepartment towards its dues of the erstwhile owner of theland in question which the petitioner had purchased throughpublic auction held by respondent No.3 Dena Bank seeking torecover its due through the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2005 (''SARFAESI Act''for short). Shortly stated, facts are as follows:

2. Respondent No.3 Dena Bank had given public advertisementin leading newspapers inviting offers from interestedparties for purchase of immovable property of one M/s.ShreeSanand Textile Industries Pvt Ltd., which was in the natureof land admeasuring 6 acres and 4 gunthas with constructedbuilding thereupon. The land was situated in village Sanandand was categorized as survey No.109/3 paike.

3. The petitioner being interested in purchasing the said land, participated in the

auction proceedings held by theoffice of the respondent No.3 Bank. The petitioner offered the highest price of total sale consideration of Rs.63lacs. The petitioner''s offer being the highest wasaccepted. As per the terms of the auction, upon fullpayment of the purchase price, sale certificate was issuedin favour of the petitioner by respondent No.3 Bank on 15.2.07. The petitioner was also put in possession of theland in question. Upon approaching the Revenue authorities,however, the petitioner learnt that in village formNo.7/12, the Central Excise Department had entered itscharge. It was recorded that the Central Excise Departmenthad to recover certain dues from the erstwhile ownerM/s.Shree Sanand Textile Industries Pvt. Ltd. Thepetitioner has produced a copy of village form whichrecords that Superintendent, Central Excise Range, Sanand-I, as per its letter dated 29.11.05 dues of Central Exciseduty is Rs.11,57,000/-.

4. Upon learning about the said charge of the CentralExcise Department, the petitioner issued notice torespondent No.1 and 2 on 16.6.07 pointing out that the land in question was mortgaged to Dena Bank. Since the mortgagee did not repay the Bank''s dues, under the provisions of the SARFAESI Act, the land was sold by Dena Bank in public auction. The petitioner is not required to satisfy the dues of the Central Excise Department. Despite such notices and efforts made by the petitioner, since the Central ExciseDepartment did not relinquish its charge, the petitioner filed the present petition and prayed for deletion of the said entry from the revenue record of the land in question.

5. On behalf of the petitioner, learned counsel Shri Rao submitted that the dues of the Excise Department cannot have priority over the dues of the secured creditor. Theland was mortgaged by the Bank and thereafter sold for realization of its dues in exercise of powers under the SARFAESI Act. He submitted that the issue is squarely covered by series of decisions of this Court as well as the Apex Court. Counsel relied on a Division Bench decision of this Court in the case of Tax Recovery Officer v. Industrial Finance Corporation of India, dated 22nd June 2011 passed in Special Civil Application No. 3786 of 2010 and connected petitions. Counsel also relied on a decision of Division Bench of this Court in the case of Kotak Mahindra Bank v. Dist. Magistrate, 2011 (1) GLR 18 . Reference was also made to the decision of the Apex Court in the case of Union of India (UOI) and Others Vs. SICOM Ltd. and Another,

6. On the other hand, learned counsel for the Revenue mainly relied on the proviso to Section 11 of the Central Excise Act to contend that even after transfer of property, the excise dues can be recovered from the land itself.

7. Having thus heard the learned counsel for the parties and having perused the documents on record, the issue is no longer debatable. In the case of Sicom Limited (supra), the Apex Court held that the debt which is secured or which by reason of the provisions of a statute becomes the first charge over the property must be held to prevail over the Crown debt which is an unsecured one. In the said case, the Apex Court was also concerned with the Central ExciseDepartment over the debt of the State Financial Corporation under the State Financial

Corporations Act.

7.1 In the case of Kotak Mahindra Bank (supra), a Division Bench of this Court was concerned with the dues of the Central Excise Department vis-a-vis the debts of the secured creditor being financial institution. It was also a case where Kotak Mahendra Bank, the financial institution, had sought to recover the secured debts in exercise of powers under the SARFAESI Act. It was in this background, Division Bench held that the unsecured Crown debt has no priority over secured debt of a secured creditor.

7.2 In the decision of Division Bench of this Court in the case of Industrial Finance Corporation of India (supra), also one of the cases pertained to the priority of dues of the Excise and Customs Department over the secured debt of the financial institution and similar view was expressed by the Division Bench in the said decision.

8. Under the circumstances, we have no hesitation in holding that the charge of the Central Excise Department cannot survive and must be ordered to be deleted. We may note that proviso to section 11 permits the Department torecover its dues in a case where the person whose liability to pay the dues transfers or otherwise disposes of his business or trade in whole or any part or effects any change in the ownership thereof, and in consequence thereof, same person succeeds in such business or trade. In the present case, such a situation has not arisen. Proviso to section 11 therefore would not attract. It is not a case of transfer of business or trade, but transfer of property under compulsory sale of the property through auction by the financial institution in exercise of powers under the SARFAESI Act.

9. In the result, the petition is allowed. Revenue Authorities are directed to delete the entry pertaining to the charge of the Central Excise Department from the records in question. It is, however, clarified that nothing stated in this order will prevent the Department from recovering its dues from the defaulter or from its other properties if so permitted in accordance with law. Rule is made absolute accordingly.

