
(2004) 03 BOM CK 0048
In the Bombay High Court
Case No : Writ Petition No. 1783 of 2004

Manibhadra Processors

APPELLANT

Vs

Additional Commissioner, Central Excise and Another

RESPONDENT

Date of Decision : 29-03-2004

Acts Referred:

Central Excise Rules, 2002 — Rule 8, 9, 9(1), 9(2), 9(3)
Constitution of India, 1950 — Article 226

Citation : (2004) 4 ALLMR 243 : (2005) 101 ECC 474 : (2005) 184 ELT 13 :
(2004) 3 MhLj 134

Hon'ble Judges : V.C. Daga, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : S.P. Kanuga and H.P. Vyas, for the Appellant; P.S. Jetly and Y.R. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

V.C. Daga, J.—The petitioner, has basically come before this Court to seek direction against the respondents to dispose of its application dated 23rd December, 2003 seeking registration of its industrial unit situate at Plot No. 31, MIDC Industrial Unit, Ambarnath, District Thane. However, during the pendency of this petition, by an order dated 19.2.2004 petitioners' request for registration came to be rejected. Petitioner now seeks to challenge the order dated 19.2.2004 incorporated at Ex. H.

Facts:

The facts giving rise to the present petition are as under:

2. On 7.11.2003 petitioner claims to have established a manufacturing unit to process cotton/ manmade fabrics at the factory premises referred to hereinabove. On 23rd December, 2003, petitioner applied to the Central Excise Department in the prescribed form to register its industrial unit under Rule 9 of the Central Excise Rules 2002 formed under the Central Excise Act, 1944

(hereinafter referred to as "Act" and "Rules" for short). The said application came to be rejected by an order dated 19.2.2004 passed by the Deputy Commissioner, Central Excise Division-IV, Kalyan, holding that the earlier holder of the Registration Certificate M/s Jagruti Textile Processors have not paid their outstanding excise dues to the extent of Rs. 8.23 lacs and failed to surrender their registration certificate with respect to the same factory premises as such no other unit in the same premises can be registered under the rules unless registration is de-registered or cancelled or surrendered by such registrant and all excise dues are cleared. The said order dated 19.2.2004 is the subject matter of challenge in the present petition filed under Article 226 of the Constitution of India.

Rival Submissions:

3. Shri Kanuga, learned Counsel appearing for the petitioner submits that the grounds disclosed for rejection in the order dated 19.2.2004 refusing to grant registration are based on extraneous consideration. In his submission, if the previous registrant has not only stopped its business but closed down its industrial unit and vacated the premises as such questions of continuing of registration becomes redundant even though such unit may not have surrendered registration certificate. The other ground that the previous registrant has not paid excise dues is also irrelevant so far as petitioner is concerned. According to him, both the grounds are unsustainable as such impugned order is liable to be set aside and appropriate writ or direction is liable to be issued to the respondents directing them to issue registration certificate forthwith.

4. Per contra, Shri Jetly, learned Counsel for the Revenue, urged that while processing the application moved by the petitioner, it has come to the notice of the department that the very same factory premises at 31, Ambarnath, Dist. Thane is already registered in the name of M/s Jagruti Textile Processors having obtained central excise registration by them on 18.10.1999 for manufacturing cotton fabrics, manmade fabrics, Embroidery Fabrics and knitted Fabrics and that M/s Jagruti Textile Processors have neither till date surrendered their registration certificate nor applied for de-registration of their industrial unit. The central excise dues amounting to Rs. 18.23 lacs are still due and recoverable from them along with interest as per Rule 8 of the Central Excise Rules. In his submission, registration is allowed under Rule 9 of the Central Excise Rules 2002 on complying with the conditions and procedure laid down in notification No. 35/23001CE(NT) dated 26.6.2001 as amended by Notification No. 30/2002CE(NT) dated 17.9.2002. Since the petitioner failed to answer the requirements of the rules, their request for registration was rightly turned down by the respondents.

5. Shri Jetly further submits that at the time of filing registration application, the petitioner did not disclose that it has purchased the machinery already installed in the premises from the licensor M/s Ludhiana Woolen and Silk Mills Pvt.Ltd. He further pointed out that no intimation regarding the termination of the lease

agreement between M/s Ludhiana Woolen and Silk Mills P.Ltd and M/s Jagruti Textile Processors for the same premises was given to the central excise department by any of the parties to the agreement as such as per the records of the respondents M/s Jagruti Textile Processors continues to be person holding lease agreement in their favour from M/s Ludhiana Woolen and Silk Mills and continues to have registration certificate under Rule 9 of the Rules as such no second registration in respect of the same factory premises can be issued.

6. Shri Jetly submits that once registration is given it is permanent. It can be revoked only by proper authority or the registrant may get himself de-registered with the Central Excise authority following procedure laid down under the rules. In his submission, M/s Jagruti Textile has not yet got their industrial unit de-registered from the central excise department as such it is not possible under Notification No. 35/2001CE(NT), dated 26.6.2002 to issue another registration certificate in the name of the petitioner for carrying out processing of fabrics in the very same industrial premises.

7. Shri Jetly further points out during investigation it was noticed that the same licensor M/s Ludhiana Woolen & Silk Mills P.Ltd had leased out the very same premises, 31, MIDS, Ambarnath, Thane, to one M/s Swastik Dyeing & Printing Mills Ltd., who had obtained excise registration on 1.10.1996 and failed to clear its dues in the sum of Rs. 9.36 lacs (appr.). The respondent- defendant has issued show cause notice and the same is pending for adjudication. In the meantime, the said M/s Ludhiana Woolen & Silk Mills leased out very same premises to M/s Jagruti Textile Processors, who have also defaulted in payment of Rs. 18.23 lacs and failed to surrender their registration certificate. He thus submits that M/s Ludhiana Woolen and Silk P.Ltd has been indulging in the act of systematic induction of different licensees in the very premises and helping them to defraud the central excise dues as such considering conduct of the parties to the transaction, this is a fit case, wherein this Court should exercise writ jurisdiction in favour of the petitioner, who has taken the very same premises on lease with knowledge of dues of the excise department or without making any enquiry in that behalf in either of the case the petitioner cannot be said to have entered into bonafide transaction. He further submits that registration is required to be done under Rule 9 of the Central Excise Rules, 2002 on the following conditions; safeguard and procedures laid down under Notification No. 33/2001CE(NT); dated 26.6.2001 as amended, by notification No. 30/2002CE(NT) dated 17.9.2002 referred to hereinabove.

8. Shri Jetly further submits that para 6 of the notification dated 17.9.2002 specifically stipulates that 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 by depositing his registration certificate with the Superintendent of Central Excise. He further relied upon para 2 of the said notification to contend that if the person has more than one premises requiring registration, separate registration certificate is required to be

obtained for each of such premises. Shri Jetly thus submits that the registration is qua premises and once registration qua petitioner's premises is granted it has permanent status unless it is suspended or revoked by Central Excise authorities or otherwise surrendered in accordance with rules framed in this behalf. Shri Jetly further submits that if such successive registrations in favour of different persons are allowed, then each registrant on committing default in payment of excise duty will walk away from the premises without surrendering registration certificate obtained by him leaving it open for other person to get fresh registration in respect of the same premises and if such applications are allowed by this Court in exercise of writ jurisdiction of this Court it will cause serious prejudice to the central excise department. He submits that writ jurisdiction can be allowed to be invoked to implement region of law and not to abrogate it or to help such persons who are out to defraud the Revenue by adopting systematic scheme as is adopted in this case.

9. In rejoinder, Shri Kanuga for the petitioner refuting the submissions made by Shri Jetly, pressed into service judgment of the Andhra Pradesh High Court in the case of Modi RJR Ltd., New Delhi and another Vs. Commissioner of Central Excise, Hyderabad-III and others, and also pressed into service one order passed by this Court in writ petition No. 2362/1989 dated 26.11.2002, Arjandas Metal Ind.P.Ltd. v. Union of India, (unreported) and prayed that this petition be allowed with suitable directions to the respondent to grant registration certificate in favour of the petitioner in respect of the premises in question.

Consideration:

10. Having heard the parties at length, it is not in dispute that grant of registration is governed by Rule 9 of the Central Excise Rules, 2002. A person, who produces manufactures, carries on trade, holds private store-room or warehouse or other uses excisable goods is required to obtain registration under Rule 9 of the Rules. It is also not in dispute that under Rule 9(2) of the said Rules the Board has a power to issue notification and to prescribe conditions or limitations specifying person or class of persons who may not be required to obtain such registration. As per Rule 9(3) grant of registration is always subject to such conditions, safeguard and procedure as may be specified by the Board in the notification issued in this behalf. In the present case, original notification dated 26.6.2001 issued by the Board came to be amended by another notification dated 17.7.2002 wherein the Board has prescribed safeguards, conditions and procedure for registration of a person under the said rules and exemption from registration in specified cases. The said amended notification provides that every person specified in Sub-rule (1) of Rule 9, unless exempted from doing so by the Board under Sub-rule (2) of Rule 9, shall get himself registered with the jurisdictional Deputy or Assistant Commissioner of Central Excise by applying in form specified in Annexure I. The registration certificate is required to be issued in respect of a particular premises. The relevant sub-rule reads as under:

"Registration of different premise of the same registered persons: If the person has more than one premise requiring registration separate registration certificate shall be obtained for each of such premises."

(Emphasis supplied)

The aforesaid sub-clause clearly lays down that if one person is having more than one premises, then he must obtain separate registration certificate for each premises. It is thus clear that registration is always in respect of a particular premises and not with respect to particular person. If one person has more than one premises he has to obtain different registration certificates in respect of each premises. The intention of the Board appears to be to prevent successive registration in respect of same premises. If that be so, one and the same premises cannot be registered in the name of two different person. In otherwords, the person holding earlier registration certificate must surrender registration certificate in respect of that premises, then only, new person can get registration in respect of that premises. In this view of the matter, no fault can be found with the impugned order passed by the Deputy Commissioner of Central Excise dated 19.2.2004, holding that earlier registrant M/s Jagruti Textile Processors having not surrendered its registration certificate no new applicant can be registered in respect of the same premises. The view taken is a reasonable and possible view so as to prevent anybody from walking away from the registered premises without satisfying duty liability.

12. So far as the judgment of Andhra Pradesh High Court in case of Modi JRJ (Supra) is concerned, the same is distinguishable not only on facts of that case but also on application of rules governing registration at the relevant time. In that case, petitioner's predecessors were in arrears and therefore, petitioner was denied certificate of registration. They had undertaken to fulfil their liabilities. Secondly, when case of Modi RJR was decided, neither notification dated 26.6.2001 nor amended notification dated 17.9.2002 was in the field. Therefore, Andhra Pradesh High Court was pleased to hold that there is nothing in the rule to decline to issue registration certificate on the ground of arrears of his predecessor. In this view of the matter, we do not think that judgment in Modi RJR cited supra is of no help to the petitioner.

13. So far as order of this Court in Writ petition No. 2362/89, Arjandas Metal Ind.P.Ltd. v. Union of India, relied upon by the petitioner is concerned, the same is also of no help to the petitioner. Firstly? the action which was the subject matter of challenge in the petition was of the year 1989, at that time notification dated 26.6.2001 as amended by notification dated 17.9.2002 was not in field. Secondly, in that case, the Collector of Central Excise had already adjudicated upon the show cause notice and vide order-in-original dated 5th December 1989 he had directed confiscation of plant and machinery and redemption thereof was allowed on payment of redemption fine in the sum of Rs. 10,000/- in lieu of confiscation, which the petitioner deposited by challan. Thirdly, the petition was disposed of practically by consent of parties as both parties had agreed that the

petition had become infructuous. In the circumstances, order of this Court in the case of Arjandas Metal Ind. (P) Ltd is of no help to the present petitioner.

14. In the result, we hold that the impugned order dated 19.2.2004 is in accordance with law. Petition deserves to be dismissed being devoid of any substance with no order as to costs.