
(2013) 10 P&H CK 0282

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11076 of 1995

M/s. Ambuja Electro Castings Limited

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-10-2013

Acts Referred:

Citation : (2014) 306 ELT 583 : (2014) 174 PLR 171

Hon'ble Judges : Rajive Bhalla, J;Bharat Bhushan Parsoon, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Rajive Bhalla, J.—The petitioner prays for issuance of a writ of certiorari quashing notices, issued under Rule 230 of the Central Excise Rules, 1944 (hereinafter referred to as the Rules"), calling upon the petitioner to discharge liabilities under the Central Excise and Salt Act, 1944 (hereinafter referred to as "the Excise Act"). M/s. Century Iron and Steels" Limited, defaulted in payment of loans to the Punjab Financial Corporation and the Punjab State Industrial Development Corporation. The plant and machinery were possessed, u/s 29 of the State Financial Corporation Act, 1951, and auctioned. The petitioner, admittedly, purchased land, building and machinery, from the Punjab Financial Corporation, in an auction that lead to execution of a sale agreement, dated 28.10.1994. The Central Excise Department served a notice, dated 09.03.1995, calling upon the petitioner to discharge the liabilities of M/s. Century Iron and Steels Limited arising from orders, relating to availment of Cenvat credit etc. The petitioner filed a reply pleading that as it has purchased property under the State Financial Corporation Act, free from all encumbrances, the liability of the original owner cannot be fastened upon the petitioner. The petitioner is before us challenging the show cause notice.

2. Counsel for the petitioner submits that the petitioner has not purchased a running concern much less the business of M/s. Century Iron and Steels Limited but has only purchased land, plant and machinery. The Hon"ble Supreme Court,

has held while considering a similar dispute in Rana Girders Ltd. Vs. Union of India (UOI) and Others, , that a purchaser is not liable to pay excise duty payable by the original owner as the liability to discharge amounts payable under the Excise Act, arise from manufacture of goods and not from the assets purchased by subsequent buyer. It is further submitted that clauses in the sale agreement require the petitioner to pay taxes etc. arising from the land or property and not any liability that M/s. Century Iron and Steels Limited may have incurred towards payment of excise duty.

3. Counsel for the revenue per-contra urges that distinction drawn by the Hon"ble Supreme Court between purchase of land and machinery as opposed to purchase of business has been recorded without considering Rule 230(1) of the Central Excise Rules, 1944, which clearly provide that duty leviable on goods or by any person carrying on trade or business, may be recovered by detaining goods, plant, and machinery till such time as duty is not paid or recovered. It is further submitted that Rule 230(2) of the Rules provides that where any such person transfers or otherwise disposes of his business in whole or in part, or effects any change in the ownership thereof, all excisable goods, material, preparations, plant, machinery, vessels etc., in possession of the person or persons succeeding to the original owner, may also be detained. It is argued that in view of Rule 230(1)(2) of the Central Excise Rules, the petitioner cannot be heard to urge that it is not liable to discharge the liability of M/s. Century Iron and Steels Limited and even otherwise as a mere show cause notice has been issued to the petitioner, the writ petition may be dismissed.

4. We have heard counsel for the parties, perused the show cause notice, the sale agreement, the judgment of the Hon"ble Supreme Court in M/s. Rana Girders Ltd. v. Union of India and others and Rule 230 of the Central Excise Rules, 1944.

5. Admittedly, land and machinery belonging to M/s. Century Iron and Steels Limited was possessed by the Punjab Financial Corporation and Punjab State Industrial Development Corporation for default in payment of loans. The land and machinery was sold and purchased by the petitioner on the basis of sale agreement dated 28.10.1994. Clauses 3, 5(ii) and (iii) of the sale agreement read as follows:--

3. The purchaser acknowledges having taken over the possession of the said property consisting of land, building and machinery as mentioned in the Schedule A" & B" hereto on "As is where is" basis which is free from all encumbrances.

5. The purchaser further covenant with the transferor as follows:--

(ii) The purchaser shall be liable to pay all land revenue and other taxes, if any, in respect of the property which may have fallen due and may fall due for payment, from the date of agreement.

(iii) The purchaser shall pay all the general and local taxes rates or ceases for

time being imposed or assessed on the said property by the competent authority.

6. A perusal of the sale agreement reveals that property belonging to M/s. Century Iron and Steels Limited has been purchased by the petitioner, free from all encumbrances but with liability to pay land revenue and general and local taxes or cesses for the time being imposed or assessed on the said property. The sale agreement does not require the petitioner to pay any amount that may have arisen from the business or manufacturing activities of M/s. Century Iron and Steels Limited. At this stage, it would be appropriate to point out that the petitioner has not purchased the "business" of M/s. Century Iron and Steels Limited.

7. The questions that arise for adjudication are whether the petitioner is liable to discharge liability of M/s. Century Iron and Steels Limited, under the Excise Act, and whether the show cause notice should be quashed, at the outset.

8. The first question has been answered by the Hon''ble Supreme Court in M/s. Rana Girders Ltd. v. Union of India and others (supra). The controversy before the Hon''ble Supreme Court was whether a purchase of land, building and machinery from a State Financial Corporation Act can be held liable to pay excise duty payable by the original owner. The dispute in the present case is identical. After considering the sale agreement, provisions of Section 29 of the State Financial Corporation Act and relevant provisions of the Central Excise Act and Rules framed, thereunder, the Hon''ble Supreme Court, has held that liability to pay excise duty arises from manufacturing of excisable items but as dues under the Excise Act relate to items manufactured and not to land, plant and machinery, these amounts cannot be recovered from the purchaser. The Hon''ble Supreme Court has also held that liability can only be fastened upon a buyer who has purchased the entire business or there is a specific provision in the statute claiming first charge on the assets. A relevant extract from the judgment reads as follows:--

21. A harmonious reading of the judgments in Macson and SICOM would tend us to conclude that it is only in those cases where the buyer had purchased the entire unit i.e. the entire business itself, that he would be responsible to discharge the liability of Central Excise as well. Otherwise, the subsequent purchaser cannot be fastened with the liability relating to the dues of the Government unless there is a specific provision in the Statute, claiming "first charge for the purchaser". As far as Central Excise Act is concerned, there was no such specific provision as noticed in SICOM as well. Proviso to Section 11 is now added by way of amendment in the Act only w.e.f. 10.9.2004. Therefore, we are eschewing our discussion regarding this proviso as that is not applicable in so far as present case is concerned. Accordingly, we thus, hold that in so far as legal position is concerned, UPFC being a secured, creditor had priority over the excise dues. We further hold that since the appellant had not purchased the entire unit as a business, as per the statutory framework he was not liable for discharging the dues of the Excise Department.

22. With this, we now revert to the first issue, namely interpretation of the clause in the Sale Deed for land and building and similar clause in Agreement of Sale for machinery on the basis of which appellant is held to be liable to pay the dues. These clauses have already been incorporated in the earlier portion of our judgment.

23. We may notice that in the first instance it was mentioned not only in the public notice but there is a specific clause inserted in the Sale Deed/Agreement as well, to the effect that the properties in question are being sold free from all encumbrances. At the same time, there is also a stipulation that "all these statutory liabilities arising out of the land shall be borne by purchaser in the sale deed" and "all these statutory liabilities arising out of the said properties shall be borne by the vendee and vendor shall not be held responsible in the Agreement of Sale." As per the High Court, these statutory liabilities would include excise dues. We find that the High Court has missed the true intent and purport of this clause. The expressions in the Sale Deed as well as in the Agreement for purchase of plant and machinery talks of statutory liabilities "arising out of the land" or statutory liabilities "arising out of the said properties" (i.e. the machinery). Thus, it is only that statutory liability which arises out of the land and building or out of plant and machinery which is to be discharged by the purchaser. Excise dues are not the statutory liabilities which arise out of the land and building or the plant and machinery. Statutory liabilities arising out of the land and building could be in the form of the property tax or other types of cess relating to property etc. Likewise, statutory liability arising out of the plant and machinery could be the sales tax etc. payable on the said machinery. As far as dues of the Central Excise are concerned, they were not related to the said plant and machinery or the land and building and thus did not arise out of those properties. Dues of the Excise Department became payable on the manufacturing of excisable items by the erstwhile owner, therefore, these statutory dues are in respect of those items produced and not the plant and machinery which was used for the purposes of manufacture. This fine distinction is not taken note at all by the High Court.

9. The controversy in the present petition is fully covered by the ratio of the aforesaid judgment. The petitioner purchased land and building and not the business of the owner. The clause in the agreement requires the petitioner to discharge statutory liabilities arising out of land and building. The petitioner, therefore, cannot be called upon to discharge liability of the original owner under the Central Excise and Sale Act, 1944. An argument raised by counsel for the revenue that in view of Rule 230(1)(2) of the Central Excise Rules, liability to pay excise duty can be recovered from plant, machinery and building, cannot be accepted in view of the binding opinion recorded by the Hon"ble Supreme Court, in the aforesaid judgment.

10. The second question is whether the show cause notice should be quashed. As a general rule, a party is relegated to seeking adjudication of the show cause

notice but as controversy in the present petition is squarely covered in favour of the petitioner, by judgment of the Hon''ble Supreme Court in M/s. Rana Girders Ltd. v. Union of India and others (supra), relegating the petitioner to seeking adjudication of the show cause notice would be an empty formality. In view of what has been recorded hereinabove, the writ petition is allowed and the show cause notices are quashed. No order as to costs.