(2016) 05 GUJ CK 0003

In the Gujarat High Court

Case No : Special Civil Application No. 3383 of 2014

Nandesari Rasayanee Ltd. APPELLANT

Vs

Regional Manager RESPONDENT

Date of Decision : 02-05-2016

Acts Referred:

Citation : (2016) 337 ELT 187

Hon'ble Judges : N.V. Anjaria, J.

Bench : Single Bench

Advocate : Shri Dharmendra Parikh, Advocate, for the Petitioner; Shri Rituraj M. Meena and Ms. Manisha Lavkumar, Advocates, for the Respondent

Final Decision : Allowed

Judgement

N.V. Anjaria, J.(Oral)—In the facts and circumstances of the case and having regard to the compass of the matter and with request and consent of learned advocates appearing for the parties, this petition is taken up for final consideration. Therefore, rule, returnable forthwith. Learned advocates for the respective parties waives service of notice of rule.

2. The petitioner has prayed for a direction against respondent Gujarat Industrial Development Corporation to issue a No-objection certificate demanded by it by letter dated 30th October, 2013.

3. The petitioner is an allottee of plot Nos. 122/4 and 122/5 by the Corporation at Vadodara. The No-objection certificate requested from the Corporation is refused on the ground that the Central Excise Department has a claim against the petitioner for its dues of Rs. 09,44,435/-. It is stated by the petitioner that said recovery was dropped by the Central Excise Tribunal, however, Department''s appeal is pending before this Court for final disposal.

3.1 By filing affidavit-in-reply, Gujarat Industrial Development Corporation (GIDC) has stated that in the year 1997 a raid was conducted by the Directorate of Revenue Intelligence and upon investigation, petitioner was asked to pay the sum of Rs. 09,44,435/-. The Corporation has justified its refusal to issue No-objection certificate by stating that it had received communication dated 9th February, 2011 from the Superintendent of Central Excise and Customs about the claim of the Excise Department against the petitioner. It is, therefore, defended by the Corporation that in view of said position, the Corporation would not permit sell of plot belonging to the petitioner and No-objection certificate would not be issued without No-objection certificate produced by the petitioner from the Excise Department.

4. Heard learned advocate Mr. Dharmendra Parkih for the petitioner as well as learned advocate for the respondent-Corporation. The Central Excise Department was impleaded as party whose learned advocate was also heard.

5. Having considered the facts and material on record, the issue is already answered by the Division Bench of this Court by its judgment dated 3rd March, 2010 in Sureshkumar M. Bhingaradia v. Union of India being Special Civil Application No. 8948 of 2008 [2010 (258) E.L.T. 28 (Guj.)]. In that case, petitioner therein was auction purchaser to whom GIDC declined to issue No-objection certificate on the ground of unpaid dues of the Excise Department.

5.1 The Court observed,

"The facts are eloquent and need not be repeated. Admittedly, Central Excise Department is not in a position to point out any provision either under the Central Excise Act, 1944 or any rules thereunder which would permit Central Excise authorities to send the communication of the nature of the communication forwarded by Central Excise Department to GIDC."

(Para 6)

"GIDC is a statutory Corporation having been incorporated under the provisions of the Statute and is thus bound by its own Constitution as per provisions of the said Act. GIDC can raise a demand, even in the form of asking for an NOC, only in relation to any dues to which GIDC is entitled as per the terms and conditions under which the immovable property belonging to GIDC is leased out. GIDC is right to the extent GIDC is asking for an application for transfer in the prescribed format accompanied by requisite fees, if any. Similarly, if any dues of GIDC are outstanding in relation to the immovable property in question, GIDC is entitled to seek satisfaction thereof before effecting transfer of the immovable property in favour of the petitioners. However, by no stretch of imagination can GIDC seek to recover dues of Central Excise Department by asking the petitioners to obtain an NOC from Central Excise Department."

(Para 7)

"In the facts and circumstances of the case, the communication by Central Excise Department cannot bind GIDC and GIDC is duty bound to effect transfer of the immovable property if all other requisite formalities as required by law are completed by the petitioners. GIDC is, therefore, directed to effect transfer of the immovable property subject to the petitioners making an application in the prescribed format accompanied by necessary fees, if any."

(Para 9)

6. In view of above, GIDC cannot refuse No-objection certificate to the petitioner on the ground that the Central Excise Department has been demanding its dues from the petitioner. The prayer and the petition deserves to be allowed by issuing necessary directions to the Gujarat Industrial Development Corporation.

6.1 Learned advocate for the petitioner states that necessary application in the prescribed format, if not made, will be made on or before 15th June, 2016 as required by the Corporation. The Corporation shall thereafter process the same in light of the law declared in the present order and issue necessary No-objection certificate. Needless to say that Gujarat Industrial Development Corporation shall be entitled to recover its dues in accordance with law.

7. Petition is allowed. Rule is made absolute. No order as to cost.