(2015) 01 AHC CK 0152

In the Allahabad High Court

Case No : Writ Tax No. 1403 of 2010

Raj Ratan Smelter Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 22-01-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11
Customs Act, 1962 — Section 142, 142(1)(c)(ii)

Citation : (2015) 319 ELT 259

Hon'ble Judges : Tarun Agarwala, J;Satish Chandra, J

Bench : Division Bench

Advocate : Pankaj Bhatia and Gopal Verma, for the Appellant; B.K.S. Raguvanshi, S.K. Misra and S.P. Kesarwani, Advocates for the Respondent

Judgement

1. The petitioner is a Company incorporated under the Indian Companies Act and by means of a sale deed dated 11-2-2008 purchased land, building and plant and machinery, which was indicated as scrap from another Company known as M/s. Ram Shiv Industries Ltd. which was another Company incorporated under the Indian Companies Act having different set of Directors. It transpires that an order under the Central Excise Act was passed against this Company, M/s. Ram Shiv Industries Ltd., pursuant to which a demand of Central Excise dues was raised by an order dated 18-9-2008. Since the Central Excise Department could not recover the amount from the erstwhile Company, M/s. Ram Shiv Industries Ltd., the department issued a notice under Section 11 of the Central Excise Act read with Section 142(1)(c)(ii) of the Customs Act to the petitioner indicating that M/s. Ram Shiv Industries Ltd. owed an amount of Rs. 4,78,76,064/- towards Excise duty, which was now liable to be paid by the petitioner along with interest @ 13% per annum. The petitioner, being aggrieved by the said notice, has filed the present writ petition.

2. Having heard Sri Pankaj Bhatia along with Sri Gopal Verma, the learned Counsel for the petitioner and Sri B.K.S. Raghuvanshi, the learned Counsel for

the Excise Department, we find that there was no embargo upon the erstwhile Company, M/s. Ram Shiv Industries Ltd., in selling its property to the petitioner. When the property was sold off on 11-2-2008 there were no Central Excise dues against the said Company. The dues came into existence after the Order-in-Original was passed by the excise authorities on 18-9-2008. Consequently, Section 142 of the Customs Act is not applicable in the instant case.

3. Even otherwise, we are of the opinion that the running business of M/s. Ram Shiv Industries Ltd. was not transferred to the petitioner. Only land, building and old scraps of machinery was sold. The petitioner has not stepped into the shoes of the erstwhile Company nor has taken the liability of the erstwhile Company. We find support of this reasoning from a decision of the Supreme Court in the case of Rana Girders Ltd. Vs. Union of India (UOI) and Others, (2014) 3 AD 26 : AIR 2013 SC 3422 : (2013) 295 ELT 12 : (2013) 23 GSTR 321 : (2013) 11 JT 226 : (2013) 4 PLR 721 : (2013) 4 RCR(Civil) 410 : (2013) 10 SCALE 356 : (2013) 10 SCC 746 : (2013) AIRSCW 4835 wherein the Supreme Court held that where the buyer purchases the entire business only then he was liable for Central Excise Duty and not otherwise.

4. In the light of the aforesaid, we are of the opinion, that the impugned notice dated 22-9-2010 demanding the Central Excise dues of M/s. Ram Shiv Industries Ltd. from the petitioner is wholly illegal and cannot be sustained and is quashed.

5. The writ petition is allowed. It would be open to the Central Excise department to recover the dues from M/s. Ram Shiv Industries Ltd. in accordance with law.