

(2005) 02 GUJ CK 0075

In the Gujarat High Court

Case No : Special Civil Application No. 464 of 2005

Rupali Dyeing and Printing Mills

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 25-02-2005

Acts Referred:

Citation : (2005) 127 ECR 422 : (2005) 187 ELT 178

Hon'ble Judges : Harsha Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Naveen K. Pahwa, for the Appellant; Jitendra Malkan, for the Respondent

Final Decision : Allowed

Judgement

D.A. Mehta, J.—This petition challenges the notice of demand to defaulter dated 5th January 2005 (Annexure "A") issued by the Assistant Commissioner of Central Excise, Division V, Surat-1, calling upon the petitioner to pay total amount of Rs. 1,38,69,343/-.

2. Heard Mr. N.K. Pahwa, the learned advocate for the petitioner and Mr. Jitendra Malkan on behalf of respondents. For the reasons that follow and taking into consideration the facts of the case, the petition is taken up for final hearing and disposal.

3. The Respondent No. 3 has issued the impugned notice (Annexure "A") stating that an amount of Rs. 1,38,69,848/- is to be recovered from the petitioner as the petitioner has taken over the liabilities of M/s. Rangoli Prints, Plot No. 2414, Road No. 24, GIDC, Sachin, Surat. The impugned notice is issued in Form Appendix II being "Notice of Demand of Defaulter". The case of the petitioner is that the petitioner, a partnership firm has not taken over the liabilities of M/s. Rangoli prints; that even otherwise the impugned notice (Annexure "A") has been issued without hearing the petitioner. It is further averred that the petitioner is not a party to the order in original dated 21st January, 2004 framed in case of M/s.

Rangoli Prints and hence, no demand raised in hands of that assessee can be recovered from the petitioner.

3.1 Inviting attention to Paragraph No. 6 of the affidavit in reply filed by Respondent No. 3, it is submitted on behalf of petitioner that the averment of the petitioner that there is no nexus with M/s. Rangoli Prints, is denied by referring to a communication dated 15th April, 2003 stated to have been tendered by one Shri Rajesh Jain, a partner of the partnership firm. This statement has categorically been disputed and denied vide Paragraph No. 7 of the affidavit in rejoinder tendered by the petitioner. The petitioner has called upon Respondent No. 3 to produce a copy of the said letter so as to check and confirm the veracity of such letter. It is submitted that despite the said statement in Paragraph No. 7 in affidavit in rejoinder, Respondent No. 3 has not placed on record the said communication dated 15th April, 2003.

4. On behalf of respondents, a contention was raised that, both the petitioner firm and M/s. Rangoli Prints have a partner who is common and in the circumstances it was the partner's responsibility to discharge the liabilities of M/s. Rangoli Prints wherein he was a partner. That the law requires that liability incurred by a firm should be discharged by the partner of that firm and in the circumstances, the respondent authorities were entitled to proceed to make recovery from the firm and/or the partners jointly and severally. Referring to receipt dated 13th January, 2004 (Annexure "E") for a sum of Rs. 3,00,000/-, it was submitted on behalf of respondents that the said payment would not have been forthcoming in case the petitioner was not connected with M/s. Rangoli Prints, and not liable to discharge the liabilities of M/s. Rangoli Prints. It was, therefore, submitted that, in these circumstances, the respondent authorities were entirely justified in initiating action to recover outstanding dues of M/s. Rangoli Prints from the petitioner.

5. As can be seen from the impugned notice (Annexure "A"), it is a notice of demand to defaulter. The learned counsel for the respondents has not been able to show from any material on record that the petitioner has been declared to be a defaulter in accordance with requirements of law in this regard. The averment that the said notice was issued without hearing the petitioner is also not denied. The entire case of revenue is based on one Shri Rajesh Jain, being an erstwhile partner of M/s. Rangoli Prints, and presently, being a partner of the petitioner firm having committed to discharge liability of M/s. Rangoli Prints. As noted hereinbefore, despite categorical statement made in the affidavit in rejoinder denying any undertaking by Shri Rajesh Jain vide letter dated 15th April, 2003, respondents have failed to produce any such document. In these circumstances, it is apparent that there is no evidence to link the petitioner firm with M/s. Rangoli Prints. The only tenuous link, according to revenue, is the common partner Shri Rajesh Jain. Even if the said fact is admitted and accepted, all that can happen in the circumstance is that Shri Rajesh Jain, in his individual capacity as an erstwhile partner of M/s. Rangoli Prints would become liable to discharge

liability of that firm, of course subject to any explanation that he may have. However, in so far as the petitioner firm is concerned, it is not possible to accept the stand of the revenue that liabilities of M/s. Rangoli Prints have been taken over by the petitioner firm in absence of any evidence in this regard. Needless to state that the petitioner firm, Shri Rajesh Jain, as an erstwhile partner of M/s. Rangoli Prints, and M/s. Rangoli Prints are three different entities and the action of the respondent authorities in treating all the three as one and the same, is not tenable in law.

6. In the circumstances, the impugned notice dated 5th January, 2005 issued by Respondent No. 3 is bad in law, against the principles of natural justice and is, therefore, hereby quashed and set aside. The petition is allowed accordingly.

7. In the circumstances of the case which have come on record, with special reference to Paragraph No. 3.10 of the result of the petition. The respondent shall pay costs of this petition, quantified at a sum of Rs. 5,000/-.