

(2011) 02 GUJ CK 0196

In the Gujarat High Court

Case No : Special Civil Application No. 8734 of 2010

Surat Metallica Ltd. and Another

APPELLANT

Vs

Commissioner of Central Excise and Another

RESPONDENT

Date of Decision : 23-02-2011

Acts Referred:

Central Excise Rules, 2002 — Rule 9
Central Excises and Salt Act, 1944 — Section 11, 12, 2, 3, 6
Constitution of India, 1950 — Article 226, 227
Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995 — Rule 10, 3, 4, 5, 9
Customs Act, 1962 — Section 142, 142(1), 156, 28B
Customs Rules, 1962 — Rule 9
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 34
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 2, 35
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Rules, 2004 — Rule 9(6)

Citation : (2011) 2 GLR 1404

Hon'ble Judges : Harsha Devani, J;H.B. Antani, J

Bench : Division Bench

Advocate : B.B. Naik, Pavan S. Godiawala, for the Appellant; R.J. Oza, for Respondent No. 1, A.L. Shah and Ravindra Shah, for the Respondent

Final Decision : Allowed

Judgement

Harsha Devani, J.—This petition under Articles 226 and 227 of the Constitution of India has been filed with the following substantive prayers:

6. The Petitioners, therefore, pray that the Hon''ble Court be pleased:

A. to issue a writ of certiorari or any other appropriate writ, order or direction to quash and set aside the impugned order/notice/communication dated 16/19-4-2010 at Annexure "A" to the Petitioner and impugned order/communication dated 10-5-2010 at Annexure "B" to the petition, and consequently, be pleased to direct the Respondent No. 1 and/or his subordinate

officers to register the Petitioners with all benefits under the Central Excise Act, 1944 and Rules framed thereunder for the property/premises situate at Plot No. 8204, G.I.D.C., Sachin, Surat.

B. to issue a writ of mandamus or any other appropriate writ, order or direction declaring that the Respondent No. 1 or his subordinate officers are not entitled to claim the outstanding dues of Excise of borrower company from the property/premises of the Petitioners situate at Plot No. 8204, G.I.D.C., Sachin in any manner whatsoever and be further pleased to quash and set aside the attachment at the said premises.

2. The Petitioner-Company is engaged in the business of manufacturing metalized film, lacquered film, etc., and holds Central Excise Registration No. AAGCS6017GXM001 at the premises situated at Plot No. 815, Road No. 3, Rajkamal Chokdi, G.I.D.C., Sachin, Surat. The subject property, situated at Plot No. 8204, G.I.D.C., Sachin was mortgaged by one Veenutex Dyeing & Printing Mills Pvt. Ltd. for financial assistance of Rs. 225 lakhs given by Panchsheel Mercantile Co-operative Bank Ltd. (Respondent No. 2 herein), on 5th June, 1988 towards a term loan of Rs. 225 lakhs. The said loan was secured by the Respondent-Bank by equitable mortgage of the leasehold rights of plot, buildings as well as hypothecation of the plant and machinery and the first charge of the Respondent-Bank was registered with the Registrar of Companies on 16th July, 1998. The Company rescheduled the said financial facility on 15th February, 2000 for an amount of Rs. 250 lakhs, which was secured by equitable mortgage of leasehold rights of plots and building as well as hypothecation of plant and machinery and the first charge of the Respondent-Bank was registered with the Registrar of Companies on 13th April, 2000. Since Veenutex Dyeing & Printing Mills Pvt. Ltd. failed to pay its dues to the Respondent-Bank, the Bank took over the possession of the said properties under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Securitization Act) and advertised for sale of the same. The Petitioners purchased the subject property for the purpose of expansion of its manufacturing activities as the said plot was situated very near to the first existing unit of the Petitioner-Company.

3. The Petitioner-Company being engaged in the business of manufacturing certain goods which compulsorily requires obtaining licence and registration from the Excise Department under the Central Excise Act, 1944 (the Act) and the Rules framed thereunder, the Petitioner had been registered with the Respondent No. 1-Commissioner of Central Excise vide the above-mentioned registration number at Plot No. 815, G.I.D.C., Sachin, Surat. The Respondent No. 1 required the Petitioner to apply for registration of the newly purchased property/premises. The initial application made by the Petitioner for addition of the subject property in the existing registered premises for the purpose of Central Excise came to be rejected by the Assistant Commissioner of Central Excise and Customs. The Respondent No. 1, thereafter required the Petitioner to make a fresh application for registration of the newly purchased property/premises. Upon the Petitioner

making such an application, the Assistant Commissioner rejected the same and refused to register the newly purchased property/premises situated at Plot No. 8204, G.I.D.C., Sachin. The communication dated 10th May, 2010 sent by the Assistant Commissioner rejecting the application for registration referred to some outstanding dues of the borrower and attachment made, hence, the Petitioners gave an application to the Assistant Commissioner to supply copies of the relevant documents based on which the application was rejected. The Superintendent of Central Excise thereafter supplied various documents to the Petitioner comprising of notice of demand to defaulter, copy of panchnama dated 2nd December, 2004, notice of attachment dated 20th December, 2004 sent by the Deputy Commissioner, Central Excise to the Company, order of attachment dated 29th December, 2004 issued by the Assessing Officer as well as other documents. The Superintendent, Central Excise refused to grant registration to the Petitioner on the ground of non-payment of dues of central excise by Veenutex Dyeing & Printing Mills Pvt. Ltd., the original borrower Company (hereinafter referred to as the defaulter unit). Being aggrieved by the action of the Respondent No. 1 in rejecting the application of the Petitioner to register/recognise the newly purchased property/premises for the purpose of Central Excise, the Petitioners have preferred the present petition.

4. In response to the petition, the Respondent No. 1 has filed an affidavit-in-reply dated 4th September, 2010 inter alia stating that the Petitioner-Company had requested for addition of unit at Plot No. 8204, G.I.D.C., Sachin, in their existing Central Excise Registration. On physical verification by the departmental officers, it was found that the said premises were under construction and were away from the registered premises; other units existed between the registered premises and the proposed premises; and the Petitioner was not using either common electricity supply or common labour force. It is in these circumstances that the Respondent No. 1 had not acceded to the request of the Petitioner which came to be communicated vide letter dated 16th/19th April, 2010. Thereafter, the Petitioner-Company claiming to be the owner of the subject property applied for grant of fresh registration under Rule 9 of Central Excise Rules, 2002 (the Rules) which came to be rejected vide order dated 10th May, 2010 in view of the fact that Plot No. 8204, G.I.D.C., Sachin of M/s. Veenutex Dyeing & Printing Mills Pvt. Ltd. was licensed/registered as 100% E.O.U. and against the said 100% E.O.U., Government dues amounting to Rs. 108.79 crores were outstanding. It is further averred that for recovery of dues, land and building of M/s. Veenutex Dyeing & Printing Mills Pvt. Ltd. have been attached u/s 142 of the Customs Act, 1962. That till date, the said premises of M/s. Veenutex Dyeing & Printing Mills Pvt. Ltd. is not de-bonded nor has the said M/s. Veenutex Dyeing & Printing Mills Pvt. Ltd. got its registration/licence cancelled/surrendered. In the circumstances, registration cannot be granted to the Petitioner--M/s. Surat Metallics Ltd. It is further stated in the affidavit-in-reply that the Respondent had requested the Respondent No. 2--Bank to take care of the central excise dues at the time of auction and the amount so recovered to be credited to the Government by way

of issue of cheque/draft in the name of Commissioner, Central Excise & Customs, Surat-I. The Respondent-Bank was well aware of the said proceedings and the Government dues of the Central Excise Department and that despite repeated requests from the Department, the Bank had not taken due care and auctioned the said property to the Petitioner without informing the Department. The Department has issued a legal notice to the said Bank about misleading information provided in the advertisement to the public notice appearing in the "Times of India", Surat edition dated 30th December, 2008 as well as in Gujarati Vernacular newspaper daily "Divya Bhaskar", Surat edition, dated 30th December, 2008. That, the Respondent-Bank on receipt of the legal notice issued by the Assistant Solicitor General on behalf of the Respondent, published a corrigendum on 17th January, 2009 to the public notice dated 30th December, 2008 in both the above newspapers referring to the communication of the Respondent about the claim against the Company. However, it was also stated there that the Bank did not admit the validity of the attachment and the Bank and the authorised officers of the Bank are advised that the alleged attachment by Assistant Commissioner, Central Excise & Customs, Surat does not create any charge on the said property. It is further averred in the affidavit-in-reply that the auction conducted by the Respondent-Bank is lacking bona fide/good faith and that it has misled the public by suppressing the relevant and material facts from the people at large.

5. The Respondent No. 2-Bank has also filed an affidavit-in-reply, inter alia, stating that the Bank is a "secured creditor" as defined in Section 2(zd) of the Securitization Act; the property in question is "secured asset" as defined in Section 2(zc) of the said Act; the outstanding amount payable by Veenutex Dyeing & Printing Mills Pvt. Ltd. is a "secured debt" as defined in Section 2(ze) of the said Act and it has created a "security interest" as defined in Section 2(zf) of the Securitization Act. The Respondent No. 2 - Bank has taken measures under Sections 13(2) and 13(4) of the Securitisation Act for enforcement of the security interest for realising its outstanding dues. It is the case of the Respondent No. 2 in the affidavit-in-reply that the Bank being a secured creditor has a first and prior charge over the secured asset, that is, the property in question. The so-called claim or so-called attachment claimed by the Respondent No. 1 over the property in question is not correct. It is further averred that the property in question is not attached and could not be attached, more particularly when the Respondent No. 2 had taken over its actual physical possession on 6th November, 2004 and since then the subject property was in the direct control and authority of the Respondent No. 2-Bank. It is contended that even otherwise the property in question being an immovable property is not "excisable goods" and the claim made by the Respondent No. 1 towards the so-called outstanding excise duty and penalty payable by Veenutex Dyeing & Printing Mills Pvt. Ltd. cannot run counter to the first charge of the Respondent No. 2-Bank over the property in question which is a secured asset. The property was given in equitable mortgage by the defaulter Company to the Respondent No. 2-Bank

lastly on 15th February, 2000 whereas even as per the notice of demand of Respondent No. 1, the so-called claim of excise duty was of October, 2003, and thereafter, that is, much after the property was given as a secured asset by the Company to the Respondent No. 2-Bank. It is further stated that the Respondent No. 1 does not have any legal authority or sanctity in making any claim over the property in question. The Respondent No. 1, at the most, can demand outstanding excise duty from the erstwhile company and not from the property in question which is re-sold by the Respondent No. 2-Bank to the Petitioner by virtue of the authority under the Securitization Act, the provisions of Section 35 whereof overrides the other laws for the time-being in force.

6. The Petitioner has filed a rejoinder-affidavit to the affidavit filed by the Respondent. The Respondent No. 2-Bank has also filed a counter-affidavit to the affidavit filed by the Respondent No. 1 and the Respondent No. 1 has filed an affidavit-in-sur-rejoinder to the rejoinder-affidavit filed by the Petitioner and the Respondent No. 2-Bank. An affidavit-in-sur-sur-rejoinder has also been filed on behalf of the Petitioner-in-reply to the sur-rejoinder filed by the Respondent No. 1.

7. Mr. B.B. Naik, learned Senior Advocate appearing with Mr. Pawan S. Godiawala, learned Advocate for the Petitioners, invited attention to the averments made in the petition to submit that pursuant to the purchase of the property in question at the auction held by Respondent No. 2-Bank, the Petitioner-Company by way of abundant caution had issued a public notice in the local newspaper "Gujarat Mitra" on 6th May, 2009 inviting objections, if any, against the Petitioner-Company purchasing the property in question, however, no objections whatsoever were received. That subsequently, the Petitioners have paid the entire amount towards sale consideration pursuant to which a sale certificate dated 30th March, 2010 has been issued to the Petitioner-Company under Rule 9(6) of the Security Interest (Enforcement) Rules, 2002. The Respondent No. 2 has thereafter executed a sale-deed conveying the property bearing No. 8204 at G.I.D.C., Sachin to the Petitioner-Company. Subsequently, the property has been transferred in the name of the Petitioners by the G.I.D.C. in the relevant record. It was submitted that the Petitioners have for the purpose of expansion of their business, on purchasing the property have made huge investment for development of the property to bring it in a usable condition and start manufacturing activities on the subject property. However, despite the fact that the Petitioners are in a position to manufacture and sell the product so manufactured in the market at the newly purchased property, on account of the refusal of the Respondent No. 1 to grant registration to the Petitioners, the Petitioners are put in a precarious condition and are unable to do their business resulting into loss of money and are facing other complications. It was submitted that the Respondent No. 1 or his officers do not have any legal authority or right to deny registration to the Petitioners in respect of the subject property on account of the so-called outstanding dues of the defaulter unit or so-called attachment made by the office of the Respondent No. 1. It was submitted that

the so-called outstanding dues of the Company payable to the Excise Department pertain to the dates 6th October, 2003, 20th February, 2004 and 26th February, 2004 which are subsequent to the properties being mortgaged and hypothecated by the Company to the Respondent-Bank, who is a secured creditor. Under the Central Excise Act, no charge is created on the land, plant and machinery. Moreover, that mortgage in favour of the Respondent-Bank is prior to the date of the alleged dues. The learned Counsel has further submitted that the Respondent-Bank being a secured creditor has a primary right to sell the secured asset namely, the property in question u/s 13(4) of the Securitization Act, without intervention of the Court in satisfaction of the liability of its debtor Company. That the Respondent No. 1 cannot claim any preferential right for recovery of its excise dues as no charge lies on the property for recovery of the duty. The so-called excise duty payable by the Company is not a secured debt and for recovery of which no charge lies on the subject property. In support of his submissions, the learned Counsel placed reliance on a decision of the Andhra Pradesh High Court in the case of Uma Mercantile Pvt. Ltd. Vs. CEGAT, as well as the decision of the Supreme Court in the case of Union of India (UOI) and Others Vs. SICOM Ltd. and Another,

7.1. The learned Counsel further submitted that the property in question is not "excisable goods" as defined u/s 2(d) read with Section 11 of the Act, and as such, the Respondent No. 1 does not have any authority in law to make any claim whatsoever on the subject property qua alleged recovery of the sums due to the Excise Department u/s 11 of the Act. Reliance was placed upon a decision of the Supreme Court in the case of Triveni Engineering and Industries Ltd. and Another Vs. Commissioner of Central Excise and Another, for the proposition that if an article is an immovable property, it cannot be termed as "excisable goods" for the purposes of the Act as in an immovable property there is neither mobility nor marketability which are the twin tests as to whether goods are marketable as understood in the excise law.

7.2. It was urged that the Respondent No. 1 while refusing to register the Petitioner-Company has based his order on the alleged recovery of dues of the Excise Department from the "defaulter". However, the thrust of the provisions of Section 11 of the Act is, effecting recovery from the defaulter or any person who owes money to the defaulter Company. The Petitioners neither owe any money to the defaulter nor can the Petitioners be termed as defaulters, and as such, the Petitioners have neither succeeded the defaulter in its business or trade nor has the plot been transferred by the defaulter to the Petitioners and as such, the provisions of Section 11 of the Act would not be attracted in the facts and circumstances of the present case. The learned Counsel also invited attention to the provisions of Section 6 of the Act which makes provision for "Registration of certain persons" as well as Rule 9 of the Rules which makes provision for "Registration" to submit that on a conjoint reading of Section 6 of the Act with Rule 9 of the Rules, the requirement is that the registration must be of the person. A perusal of Section 6 makes it absolutely clear that who has to be

registered is the prescribed person. Under Rule 9 also, it is the person who is to get registered. It was submitted that the notification issued under Rule 9 of the Rules only sets out that if a registered person has more than one premises, then each of such separate premises would require registration certificate for each of such premises, that is, it is the person who has to obtain separate registration certificate for each of the separate premises. Thus, both Section 6 of the Act as well as Rule 9 of the Rules and the notification issued thereunder contemplate that it is the person who must be registered. Neither Section 6, nor Rule 9, nor the notification, are provisions for enforcing the claim for dues of the Excise Department. As such, there is no specific or implied power vested in the Respondent No. 1 under the Act or the Rules to deny registration to the Petitioners on the ground of outstanding dues of the predecessor-in-title. Reliance was placed upon a decision of the Bombay High Court in the case of *Tata Metaliks Limited and Sri Amit Ghosh Vs. The Union of India (UOI) and Others*,

7.3. The learned Counsel further invited attention to the provisions of Section 142 of the Customs Act, 1962 which makes provision for recovery of sums due to the Government to submit that neither the Respondent No. 1 nor the Assistant Commissioner of Central Excise have powers u/s 142 of the Customs Act, 1962 inasmuch as they are appointed and can exercise their powers under the Central Excise Act, 1944. It was submitted that the documents supplied by the office of the Respondent No. 1 reveal that the exercise of the so-called attachment is shown between the period 2nd December, 2004 to 30th December, 2004, whereas the Respondent-Bank had already resorted to the measures under the Securitization Act, qua the mortgaged and hypothecated properties by issuing notice dated 31st July, 2004 u/s 13(2) of the said Act, and had taken actual physical possession of the immovable and movable properties of the defaulter on 6th November, 2004 and published the possession notice as contemplated in the Securitization Act on 12th November, 2004 in the daily newspapers and had also published a notice of sale of immovable and movable properties in two newspapers. Under the circumstances, when the actual physical possession of the property in question was with the Respondent-Bank and was in its sole custody and control, even as per the notification dated 2nd December, 2004 prepared at the instance of the Assistant Commissioner of Excise, no attachment can be said to have been made on the subject property at the instance of Respondent No. 1 or his Department. It was contended that the Assistant Commissioner who had issued the notice and had prepared the so-called attachment order is not a proper officer as contemplated u/s 142(1)(c)(ii) of the Act.

7.4. In conclusion, it was submitted that the impugned action of the Respondent No. 1 and his subordinate officer violates the constitutional rights of the Petitioners so as to deprive it of its property without due process of law. It was submitted that as per Section 6 of the Central Excise Act, it is mandatory for the Petitioners to get licence from the Excise Department for production or

manufacture of any process of any specified goods included in the Schedule to the Central Excise Tariff Act, 1985 etc. and that as per Rule 9 of the Rules, it is mandatory for the Petitioners to get the newly purchased property registered as an extension of the existing registration or to get new registration as indicated by Respondent No. 1 and that the Respondents were not justified in denying registration to the Petitioners without any valid or legal basis.

8. The petition was vehemently opposed by Mr. R.J. Oza, learned Senior Standing Counsel appearing on behalf of the Respondent No. 1. It was submitted that after issuing attachment notice on 20th December, 2004, the subject property had been attached on 29th December, 2004 in exercise of powers u/s 142 of the Customs Act. It was submitted that in the present case, the offer made by the Petitioners had been accepted by the Respondent-Bank on 4th May, 2009 whereas the order of attachment had been made on 29th December, 2004, much before the transfer of the subject property. Inviting attention to Rule 9 of the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995 (hereinafter referred to as "the Attachment Rules") which makes provision for "Private alienation to be void in certain cases", it was submitted that under the said provision, where an attachment has been made under the said Rules, any private transfer or delivery of the property attached or of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment. It was submitted that by operation of the said rule, the tender notice which has been issued subsequent to the attachment, was. not valid and any action taken thereunder would be void in view of the provisions of Sub-rule (ii) of Rule 9 of the Rules. It was submitted that the attachment in question had been made way back in 2004 and that the same subsists till date and that no legal occasion has arisen for setting aside the attachment. It was strenuously argued that the attachment having been made much prior to the transfer of the subject property in favour of the Petitioners, the Petitioners have no locus to challenge the said attachment.

8.1. As regards the challenge to the authority of the Respondent authorities to make the attachment in question u/s 142 of the Customs Act, attention was invited to the provisions of Section 12 of the Central Excise Act which provides for application of the provisions of the Customs Act, 1962 to the central excise duties. It was submitted that under the said provision, it is permissible for the Central Government, by notification in the Official Gazette, to declare that any of the provisions of the Customs Act inter alia relating to levy and exemption from customs duties, etc., may be made applicable to like matters in respect of the duties imposed by Section 3 of the Central Excise Act. It was submitted that in exercise of powers u/s 12 of the Act, the Central Government has issued a notification making the provisions of Section 142 of the Customs Act applicable in respect of duties imposed u/s 3 of the Central Excise Act and as such, the Respondent No. 1 is duly empowered under the provisions of the Act to exercise power u/s 142 of the Customs Act.

8.2. As regards the contention raised on behalf of the Petitioners that the Respondent has no authority to attach immovable property for recovery of central excise duties in view of the provisions of Section 11 of the Act, the learned Counsel referred to the provisions of Section 142 of the Customs Act, 1962 to submit that under Clause (c) of Sub-section (1) thereof, the proper officer is empowered on an authorisation by a Commissioner of Customs and in accordance with the rules made in this behalf to distrain any immovable or movable property belonging to or under the control of such person from whom the amount is sought to be recovered and detain the same until the amount payable is paid and in case any part of the said amount payable remains unpaid for a period of thirty days next after such distress, he is further empowered to cause the said property to be sold. It was submitted that in the light of the said provision, it is permissible for the Central Excise officer who has been empowered under a notification issued u/s 12 of the Act to recover the sums due to the Government by resorting to the provisions u/s 142 of the Customs Act even against immovable property belonging to such person. It was submitted that in the circumstances, the attachment made by the Respondent is just, legal and proper and in accordance with the Rules made in this regard.

8.3. The learned Counsel further submitted that the sale subsequent to attachment is deemed to be void in view of Rule 9 of the Attachment Rules. Reliance was placed upon a decision of the Supreme Court in the case of Dhurandhar Prasad Singh Vs. Jai Prakash University and Others, for the proposition that one type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same, no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceedings or otherwise. It was submitted that by operation of the provisions of the statute, the transaction in question is void, hence, the revenue is not required to take notice of the same. It was submitted that the Department is not challenging the preferential claim of the Bank, however, the Department is opposing the reliefs claimed in the petition in the light of the fact that action taken of sale of the subject property is null and void.

8.4. Inviting attention to the reliefs claimed in the petition, it was submitted that the prayer made vide Paragraph 6(B) of the petition is not maintainable inasmuch as no demand has been made by the Respondent No. 1, seeking to recover the dues of the defaulter from the Petitioners.

8.5. As regards the relief claiming registration under the provisions of the Act is concerned, it was submitted that considering the fact that the defaulter, Veenutex Dyeing & Printing Mills Ltd. has already been registered in respect of the said premises, a second unit cannot be registered in respect of the same premises, and as such, the Petitioner is not entitled to the grant of the said relief. Reliance was placed upon a decision of the Bombay High Court in the case of Manibhadra Processors Vs. Additional Commissioner, Central Excise and Another, for the proposition that one and the same premises cannot be registered in the

name of two different persons. The Court held that a person holding earlier registration certificates must surrender registration certificates in respect of that premises, then only a new person can get registration in respect of that premises. It was submitted that against the said decision of the Bombay High Court, SLP had been filed before the Supreme Court which came to be withdrawn vide the order reported in 2005 (185) ELT A-227. It was submitted that in the circumstances, the action taken by the Respondent is in consonance with the above referred decision of the Bombay High Court, and as such, there is no warrant for any interference by this Court.

9. On behalf of the Respondent No. 2-Bank, Mr. A.L. Shah, learned Advocate appearing with Mr. Ravindra Shah, learned Advocate for the Respondent No. 2 submitted that the Bank is a secured creditor. At the point of time when the property in question was mortgaged in favour of the Bank, there were no excise liabilities. The excise liabilities arose only in 2004. It was submitted that when the mortgage in favour of the Respondent No. 2-Bank was first in point of time, the Central Government being an unsecured creditor would not have priority over the secured creditor. It was submitted that once a person purchases property under the provisions of the Securitization Act, he gets a clear title. In support of the said submission, reliance was placed upon the decision of the Supreme Court in the case of Kerala State Financial Enterprises Ltd. Vs. Official Liquidator, High Court of Kerala, It was further submitted that attachment does not create a charge and has no encumbrance on the property. Reliance was placed upon a decision in the case of Ananta Mills Ltd. v. City Deputy Collector, Ahmedabad, 1972 (42) Comp. Cases 476. It was submitted that in view of the provisions of Section 35 of the Securitization Act, the provisions of the said Act, would prevail over the provisions of the Central Excise Act, and as such, the attachment made by the Respondent is not legal and valid.

10. Mr. B.B. Naik, learned Counsel appearing on behalf of the Petitioner, in rejoinder, invited attention to the provisions of Rule 3 and Rule 4 of the Attachment Rules to point out that the said rules provide for procedure for attachment of property. Referring to Rule 3 and Rule 4 of the said Rules, it was submitted that no such procedure as laid down under the rules have been followed, and as such, even the basic conditions precedent for attaching the property are not satisfied in the facts and circumstances of the case. It was further submitted that attachment can be made provided possession is of the defaulter. In the facts of the present case, the Respondent No. 2-Bank has taken over possession from the defaulter prior to the attachment and as such, the alleged attachment is without any authority of law. Reliance was placed upon a decision in the case of Tata Metaliks Limited and Sri Amit Ghosh Vs. The Union of India (UOI) and Others,

11. In reply to the submissions advanced on behalf of the Respondent No. 2-Bank, Mr. R.J. Oza, learned Senior Standing Counsel for the Respondent No. 1 placed reliance on the decision of the Delhi High Court in the case of Industrial

Finance Corporation of India Vs. Allied International Products Ltd. and Others, where the Court in the context of Section 34 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 which is more or less in pari materia to Section 35 of the Securitization Act, held that Section 34 of the said Act keeps intact the Industrial Finance Corporation Act, 1948 and in no way limits, hinders or impairs the play of its provisions. It was submitted that similarly the provisions of Section 35 of the Securitization Act, would have no effect on the proceedings taken under the Central Excise Act and the Rules framed thereunder. Reliance was also placed upon the decision of the Delhi High Court in the case of Industrial Finance Corporation Ltd. Vs. Agra Construction Co. Ltd., the decision of this High Court in the case of Bharat Chemical Works and Others Vs. Gujarat State Financial Corporation, Ahmedabad,

12. The facts are not in dispute. The defaulter, M/s. Veenutex Dyeing & Printing Mills (P) Ltd., took a term loan of Rs. 225 lakhs from the Respondent-Bank against land and building and hypothecation loan against plant and machinery. The said loan was secured by the Respondent-Bank by equitable mortgage of the leasehold rights of plots and buildings as well as hypothecation of the plant and machinery and the first charge of the Respondent-Bank was registered with the Registrar of Companies on 16th July, 1998. Subsequently, the financial facility was rescheduled by M/s. Veenutex Dyeing & Printing Mills (P) Ltd. on 15th February, 2000 for an amount of Rs. 250 lakhs and the same was secured by equitable mortgage of leasehold rights on plots and buildings as well as hypothecation of plant and machinery and the first charge of the Respondent-Bank was registered with the Registrar of Companies on 13th April, 2000. The outstanding dues of the borrower company payable to the Excise Department pertains to the Orders-in-Original dated 10th August, 2001, 6th October, 2003, 20th February, 2004, 26th February, 2004 and 18th March, 2004, which are subsequent to the said properties being mortgaged and hypothecated by the defaulter to the Respondent-Bank. Since the financial facility was not repaid by the borrower, the Bank issued notice on 31st July, 2004 u/s 13(2) of the Securitization Act calling upon the defaulter to repay the outstanding dues. Since the secured dues were not repaid, the Respondent-Bank took over the actual physical possession of the property given by way of security, viz., land, building and machineries, on 6th November, 2004 and public notices in this regard came to be published in two daily newspapers. The Respondent-Bank thereafter got the immovable properties valued through the Government Resolution approved valuer and published second notice dated 24th December, 2004 for sale which came to be published in two daily newspapers on 28th December, 2004. Subsequent thereto, on 29th December, 2004, the Respondent No. 1 passed an order of attachment of immovable property attaching the subject property in exercise of powers u/s 142(1)(c)(ii) of the Customs Act, 1962 and Rule 4 of the Attachment Rules. Pursuant to the sale notice dated 24th December, 2004, the Respondent-Bank sold the machineries of the defaulter Company to one Amar Traders on 19th January, 2005 for Rs. 53,00,001/- and after making payment

thereof the machineries were taken away by Amar Traders. The Respondent-Bank issued Anr. sale notice on 30th December, 2008, pursuant to which the Additional Commissioner (Legal), Central Excise and Customs issued notice dated 10th January, 2009 to the Respondent-Bank calling upon it to publish a corrigendum to the public notice. The Respondent-Bank issued a corrigendum notice dated 15th January, 2009 in two daily newspapers not admitting the claim made by the Additional Commissioner, Central Excise and Customs. Subsequent thereto on 30th March, 2009, the Respondent-Bank published yet Anr. advertisement for sale in two daily newspapers pursuant to which the Petitioner made an offer of Rs. 1.80 crores to purchase the subject property. The said offer came to be accepted vide communication dated 4th May, 2009. Thereafter, after paying various outstanding charges, the Respondent-Bank upon receipt of the total sale consideration issued a sale certificate dated 30th March, 2010 under Rule 9(6) of the Security Interest (Enforcement) Rules, 2002. Since, the Petitioners wanted to utilise the said premises for the purpose of manufacturing excisable goods, they applied for registration of the newly purchased premises under the provisions of the Central Excise Act. However, as noted hereinabove, the registration has been refused on the ground that the subject property already stands registered in the name of the borrower unit.

13. In the aforesaid backdrop, the main issue that arises for consideration is as to whether the Respondent No. 1 is justified in refusing to grant registration to the Petitioners under the Central Excise Act in respect of the subject property.

14. A perusal of the order/communication dated 10th May, 2010 of the Respondent No. 1 indicates that the main reason for rejecting the application for registration of the Petitioners is that M/s. Veenutex Dyeing & Printing Mills (P) Ltd. is licensed/registered as 100% E.O.U. and against the 100% E.O.U., Government dues amounting to Rs. 108.79 crores are outstanding and that for recovery of the said dues, land, building, plant and machinery of M/s. Veenutex Dyeing & Printing Mills Pvt. Ltd. have been attached u/s 142 of the Customs Act, 1962 on 29th December, 2004.

15. Thus, the main reason for refusing to grant registration to the Petitioners is that the subject property has been attached u/s 142 of the Customs Act, 1962. Another reason stated during the course of hearing of the petition is that in respect of the same premises two persons cannot be registered. Since, the registration of the defaulter Company has still not been cancelled, the Petitioner cannot be granted registration in respect of the same premises. It would, therefore, be necessary to examine as to whether the Respondent No. 1 was justified in refusing registration to the Petitioner in respect of the subject property on the aforesaid grounds.

16. As noted hereinabove, before making the order of attachment, the Deputy Commissioner, Central Excise Div.-V, Surat-I had issued a notice of attachment dated 20th December, 2004 to the defaulter Company under Rules 9 and 10 of the Attachment Rules calling upon it to pay the amount of Rs. 1,08,75,50,067/-

within a period of seven days of service of notice which appears to have been issued in terms of Rule 4 of the Attachment Rules. The said notice states that the borrower was required to pay a sum of Rs. 1,08,75,50,067/-. The notice also states that by virtue of notification dated 4th May, 1963, Section 142(1)(ii)(c) of the Customs Act, 1962 has been made applicable to Central Excise matters. Thereafter, the order of attachment came to be made on 29th December, 2004 prohibiting and restraining the defaulter Company from transferring or charging the property mentioned therein in any way and prohibiting all persons from taking any benefit of such transfer of charge. Thus, the property in question has purportedly been attached under the provisions of the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995 read with Section 142 of the Customs Act. It may be pertinent to note that prior to the date of making the order of attachment, the possession of the subject property had already been taken over by the Respondent-Bank on 6th November, 2004.

17. Section 11 of the Central Excise Act makes provision for recovery of sums due to Government. The said Section provides that in respect of any duty and any other sums of any kind payable to the Central Government under any of the provisions of the Act or the Rules made thereunder, the Officer empowered by the Central Board of Excise and Customs to levy such duty or require the payment of such sums may: (i) deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control; or (ii) may recover the amount by attachment and sale of excisable goods belonging to such person; and (iii) if the amount payable is not so recovered he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district in which such person resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue. The proviso thereto lays down that where the person from whom the duty or any other sums of any kind as specified in the Section is recoverable or due, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all excisable goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the custody or possession of the person so succeeding may also be attached and sold by such officer empowered by the Central Board of Excise and Customs, after obtaining written approval from the Commissioner of Central Excise for the purposes of recovering such duties or other sums recoverable or due from such predecessor at the time of such transfer or otherwise disposal or change. In the facts of the present case, admittedly, it is not the person from whom the amounts were recoverable or due, who has transferred the property in question to the Petitioner. The property had been sold to the Petitioners under the provisions of the Securitization Act, by the Respondent-Bank who is a secured creditor. Moreover, what has been sold to the

Petitioners is the immovable property of the defaulter Company and not the business or trade, in whole or in part. The Petitioner, therefore, has not succeeded the defaulter in the business or trade. In the circumstances, the proviso to Section 11 of the Act would not be attracted in the present case. Insofar as the first and second contingencies referred to hereinabove are concerned, admittedly the same do not exist in the present case. Insofar as the third contingency is concerned, it is an admitted position that no action has been taken in terms thereof inasmuch as the officer empowered has not prepared any certificate specifying the amount due from the defaulter etc. as required under the said clause. Thus, prima facie, the provisions of Section 11 are not attracted in the present case.

18. Whereas it is the case of the Petitioners that the Central Excise authorities have no power to recover Central Excise dues from sale of immovable properties, on behalf of the Respondent No. 1, it has been contended that the attachment has been made in exercise of powers u/s 142 of the Customs Act, 1962 and that by virtue of a notification issued by the Central Government in exercise of powers u/s 12 of the Central Excise Act, 1944 the said provision has been made applicable to recoveries under the Central Excise Act also. It has, therefore, been contended that under the provisions of Clause (c) of Sub-section (1) of Section 142, it is permissible for the Central Excise authorities to attach and sell immovable properties also for the purpose of recovering Central Excise dues, and as such, the attachment has been made in exercise of powers u/s 142 of the Customs Act read with Rules 9 and 10 of the Attachment Rules.

19. Section 142 of the Customs Act, 1962 insofar as the same is relevant for the present purpose reads thus:

Section 142. Recovery of sums due to Government:- (1) Where any sum payable by any person under this Act including the amount required to be paid to the credit of the Central Government u/s 28B is not paid,--

(a) xxx

(b) xxx

(c) if the amount cannot be recovered from such person in the manner provided in Clause (a) or Clause (b)--

(i) the Assistant Commissioner of Customs may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector on receipt of such certificate shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue; or

(ii) the proper officer may, on an authorisation by a Commissioner of Customs and in accordance with the rules made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain

the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus, if any, to such person:

Provided that where the person (hereinafter referred to as predecessor), by whom any sum payable under this Act including the amount required to be paid to the credit of the Central Government u/s 28B is not paid, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the custody or possession of the person so succeeding may also be attached and sold by the proper officer, after obtaining written approval from the Commissioner of Customs, for the purposes of recovering the amount so payable by such predecessor at the time of such transfer or otherwise disposal or change.

20. A perusal of Clause (c) of Sub-section (1) of Section 142 indicates that Sub-clause (i) thereof, is in pari materia with the third contingency u/s 11 of the Central Excise Act which is not attracted in the present case. Sub-clause (ii) of Clause (c) empowers the proper officer on an authorisation by a Commissioner of Customs to distrain any immovable or movable property belonging to or under the control of such person for recovery of the amounts due. In case the amount is not paid, the said provision empowers the proper officer, after obtaining written approval of the Commissioner of Customs, to sell the property so attached for the purpose of recovering the amount so payable by the predecessor-in-title of the person who has obtained the property by way of transfer from the original owner.

21. In exercise of powers conferred u/s 156 read with Section 142 of the Customs Act, 1962, the Central Government has made Rules namely the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995. Chapter II of the said Rules makes provision for "Procedure for attachment". Rule 3 thereof makes provision for issue of certificate in case where Government dues are not paid by any defaulter. Rule 4 thereof provides for issue of notice to be served upon the defaulter requiring the defaulter to pay the amount specified in the certificate within the prescribed period and in default, the subordinate officer is authorised to take steps to realise the amount mentioned in the certificate in terms of the Rules. Rule 5 makes provision for "Attachment of property" and lays down that if the amount mentioned in the notice issued in terms of Rule 4 is not paid within seven days from the date of service of notice, the proper officer may proceed to realise the amount by attachment and sale of the defaulter's property. Sub-rule (ii) of Rule 9 of the Rules provides that where an attachment has been made under the Rules, any

private transfer or delivery of the property attached or of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.

22. In the facts of the present case, it is an admitted position that the attachment of the subject property has been made under Rule 5 of the Attachment Rules which empowers the proper officer to proceed to realise the amount by attachment and sale of the defaulter's property, if the amount mentioned in the notice issued in terms of Rule 4 is not paid within seven days from the date of service of the notice. In the facts of the present case, on a perusal of the demand notice dated 2nd December, 2004, it appears that the same has been issued under Rule 4 of the Attachment Rules. However, there is nothing on record to indicate the issuance of any certificate as contemplated under Rule 3 of the Rules. While the demand notice issued under Rule 4 of the Rules speaks of the Commissioner, Central Excise and Customs, Surat-I having designated the Assistant Commissioner as "Authorised Officer" u/s 142(1)(c)(ii) of the Customs Act, 1962 for attachment and sale of immovable and movable property, the same does not speak of receipt of any certificate mentioned in Rule 3 of the Rules.

23. Be that as it may, on a plain reading of the provisions of Section 142(1)(c)(ii) of the Customs Act, it is apparent that the same empowers the authorised officer to distrain any immovable or movable property belonging to or under the control of such person and detain the same until the amount payable is paid, and further empowers him to cause such property to be sold in case any part of the amount payable or of the cost of distress or keeping of the property remains unpaid, for a period of thirty days next after any such distress, towards satisfaction of such dues. Thus, the said Section makes provision for sale of the attached property, if the amount remains unpaid for thirty days. Rule 5 of the Attachment Rules provides that if the amount mentioned in the notice issued in terms of Rule 4 of the Rules is not paid within seven days from the date of service of notice, the proper officer may proceed to realise the amount of attachment and sale of defaulter's property. For this purpose, the proper officer may detain the defaulter's property until the amount mentioned in the certificate together with cost of detention is paid by the defaulter. In the facts of the present case, the demand notice had been issued way back on 2nd December, 2004 calling upon the defaulter to pay the outstanding amount within seven days of the date of service of the notice. Since, the amount was not paid by the defaulter within seven days from the service of the notice, attachment was made by the authorised officer on 29th December, 2004, whereas the subject property came to be transferred in favour of the Petitioners in April, 2009, much after the period of thirty days from the date of attachment had expired. In the interregnum, between the date of the attachment and the date of sale in favour of the Petitioners, several public notices for sale of the subject property came to be issued by the Respondent-Bank. But, throughout the said period from the date of making attachment till the sale in favour of the Petitioners, the Central Excise

authorities remained passive and indolent. Though, Rule 5 of the Attachment Rules read with Section 142(1)(c)(ii) of the Customs Act empowers the proper officer to proceed to realise the amount by attachment and sale of the defaulter's properties, if the amount is not paid within a period of thirty days of the attachment, no steps had been taken by the concerned authorities at the relevant time to realise the dues by sale of the said property. Once, the attachment had been made in December, 2004 the authorised officer could have proceeded further in exercise, of powers u/s 142 of the Act. However, for some inexplicable reason, he has chosen not to do so and has remained satisfied with making the attachment and does not appear to have taken any steps to cause the subject property to be sold so as to recover the Central Excise dues. Had any action been taken by the authorised officer at the relevant time, no supervening events would have intervened. The inter se claims of the Central Excise department and the Respondent-Bank in respect of the subject property would have been decided without third party rights coming into existence. If the Respondent-Bank had a better charge over the subject property the same would have been decided at that point of time. The initial lethargy on the part of the Central Excise authorities in recovering the dues from the defaulter at the relevant time after making attachment under the Rules is difficult to fathom and is also highly prejudicial to the interests of the revenue. When the Act empowers sale of the attached property after the period prescribed, such action has to be taken within a reasonable period thereafter. The attachment cannot continue interminably at the whims and fancy of the Central Excise authorities. When it is the specific case of the Respondents that they are duly empowered under the Act and the Rules to attach property, one fails to understand what prevented them from proceeding further in exercise of the said powers. No explanation has come forth as to why the Respondents have been satisfied with merely attaching the property without taking any further steps for recovery of the amounts due despite the fact that a period of more than four years had elapsed between the date of attachment and the sale in favour of the Petitioners. It is only when the Petitioners sought registration under the provisions of the Central Excise Act, in respect of the premises in question, that the Central Excise authorities have woken up from their slumber and now seek to deny the registration on the ground that the property had been attached.

24. On behalf of the Respondent No. 1, reliance had been placed upon Rule 9 of the Attachment Rules to submit that in the light of the said Rules, once attachment has been made by the Central Excise authority, any transfer or delivery of property attached shall be void as against all claims enforceable under the attachment. Reliance is placed upon a decision of the Supreme Court in the case of *Dhurandhar Prasad Singh Vs. Jai Prakash University and Others*, for the proposition that if an auction is void ab initio, for avoiding the same, no declaration is necessary as law does not take notice of the same and it can be disregarded in collateral proceedings. The said contention has to be tested in the light of the provisions of Rule 9 of the Attachment Rules which reads thus:

Rule 9. Private alienation to be void in certain cases:- (i) Where a notice has been served on a defaulter under Rule 4, the defaulter or his representative-in-interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the written permission of the Proper Officer.

(ii) Where any attachment has been made under these rules, any private transfer or delivery of the property attached or of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.

25. On a plain reading of Rule 9 of the Attachment Rules, it is apparent that the same pertains to private alienation and as such would apply in case where there is a private transfer of the property attached. Sub-rule (i) prohibits a defaulter or his representative in interest from dealing with the property which is subject matter of attachment and Sub-rule (ii) provides that any private transfer in relation to property attached under the Rules shall be void. In the present case, the subject property has been transferred to the Petitioners by the Respondent No. 2-Bank, who is neither a defaulter nor the representative-in-interest of the defaulter, and as such, Sub-rule (i) of Rule 9 of the Attachment Rules would not be attracted. Besides, the subject property has been sold to the Petitioners in auction proceedings, in exercise of statutory powers under the Securitization Act, hence the transfer in favour of the Petitioners cannot be said to be by way of a private transfer as contemplated in Rule 9 of the Attachment Rules. Thus, the transfer in favour of the Petitioners not being a private transfer, the prohibition under Sub-rule (ii) of Rule 9 would not apply to the same. Hence, the contention that in view of Sub-rule (ii) of Rule 9 of the Attachment Rules, the transfer of the subject property to the Petitioners is void does not merit acceptance.

26. In the light of the aforesaid, it is apparent that the provisions of Rule 9 of the Attachment Rules would not be applicable to the transfer made in favour of the Petitioners and that the attachment, if any, made by the Respondents in the year 2004, would not operate qua the present Petitioners. In any case, as noted hereinabove, an attachment even if validly made u/s 142(1)(c)(ii) of the Customs Act cannot continue for all times to come. The Respondents having failed to take any subsequent action pursuant to the attachment in terms of the statutory provisions within a reasonable period and having permitted creation of equities in favour of third party, cannot now be permitted to contend that the attachment still continues. It appears that for reasons best known to them, such a situation has arisen on account of lack of will on the part of the Central Excise authorities to recover the Central Excise dues from the defaulter.

27. As regards the refusal to grant registration under the provisions of the Central Excise Act to the Petitioners in relation to the subject property on the ground that the same has been attached u/s 142 of the Customs Act on 29th December, 2004, as noted hereinabove, the lands in question having been sold to the Petitioners, in exercise of powers under the Securitisation Act, any

attachment made prior thereto would no longer survive. In any case, the attachment made in the year 2004 would not continue till the year 2009, in the absence of any further action having been taken by the Respondent authorities under the relevant provisions of the Act and the Rules. In case the Central Excise authorities were prevented from proceeding further pursuant to the attachment by any other reason, viz., by an order of a Court of competent jurisdiction staying further proceedings, etc., the matter would stand on a different footing. But properties cannot be simply attached for years together without taking any further action. More so, in a case like the present one, where the Central Excise have permitted third party interests to be created. In the circumstances, the Respondent No. 1 was not justified in refusing to grant registration to the Petitioners on the ground of attachment made u/s 142 of the Customs Act, 1962.

28. Though, not expressly stated in the order refusing registration, before the Court, on behalf of the Respondent No. 1, it has been contended that premises can be registered under the Central Excise Act only in relation to one person; that the defaulter M/s. Veenutex Dyeing & Printing Mills Pvt. Ltd. having already been registered in relation to the subject premises, unless such registration is revoked and cancelled, registration cannot be granted to the Petitioners in relation to the said property. Attention was invited to Notification No. 35 of 2001 C.E. (N.T.) dated 26th June, 2001 as amended from time to time, issued in exercise of powers under Rule 9 of the Central Excise Rules, 2001 which provides for the conditions, safeguards and procedures for registration and exemption in specified cases. Reference was made to Clause (2) thereof which says that if the person has more than one premises requiring registration, separate registration certificate shall be obtained for each of such premises; Clause (4) thereof which says that where a registered person transfers his business to Anr. person, the transferee shall get himself registered afresh as well as Clauses (6) and (7) thereof which provide for de-registration and revocation or suspension of registration, to submit that on a conjoint reading of the said clauses it is apparent that unless registration in relation to the same premises granted to Anr. person is revoked, no registration can be granted to Anr. person in respect of the same unit as two persons cannot be simultaneously registered in respect of the same premises. In support of the said contention, the learned Counsel had placed reliance upon a decision of the Bombay High Court in the case of *Manibhadra Processors v. Additional Commissioner of Central Excise* (supra) wherein it has been held that one and the same premises cannot be registered in the name of two different persons. That the person holding earlier registration certificate must surrender registration certificate in respect of that premises, then only can a new person get registered in respect of that premises. However, on behalf of the Petitioners, reliance had been placed upon a decision of the Bombay High Court in the case of *Tata Metaliks Limited and Sri Amit Ghosh Vs. The Union of India (UOI) and Others*, wherein the Court after considering the provisions of Section 6 of the Act, Rule 9 of the Central Excise Rules, and the notification issued thereunder, has inter alia held thus:

7. A perusal of Section 6 makes it absolutely clear that who has to be registered is the prescribed person. Under the rules also, it is the person who has to get registered. The notification in Clause (2) only sets out that if such registered person has more than one premises, then each of such separate premises would require registration certificate for each of such premises. In other words, it is the person who has to obtain separate registration certificate for each of the said premises. It is open to a person who has ceased to carry on the business to apply for de-registration. Would that mean in the absence of the person who has closed or sold the business or premises, applying for de-registration, there is no jurisdiction to grant Anr. person registration of the premises as in the case of a bona fide transferee for value or for that to the owner of the premises whose lessee has defaulted in payment of excise dues. Section 6 and Rule 9 and the notification contemplates that it is the person who must be registered. Neither Section 6 nor Rule 9 and the Notification is a provision for enforcing the claim for dues of the department. That is contained in different provisions. An immovable property by itself cannot be sold unless the owner of the premises is defaulter and that too under a certificate as arrears of land revenue. That sale would be subject to the priority of claims. In case of a lease-hold property given for a particular period, there would be no question of sale of the property except the limited interest. In our opinion, the case of bona fide transferee was not in issue in the case of M/s. Manibhadra Processors (supra) or the instances we have cited above. The Respondent No. 3 has, therefore, clearly acted without jurisdiction in refusing to grant registration on the specious plea that M/s. Usha Ispat whose assets has been sold and purchased by the Petitioners has not applied for de-registration. In the absence of a specific power to deny registration, the alternate would be whether there would be implied power. Neither Section 6 or Rule 9 or for that matter the notification confers such power. The right of revenue, however, would subsist for recovery of dues both against the defaulter or the transferee if the predicates for recovery are met. An incidental aspect of the matter would be if the licence is for a particular period, on expiry of that period, the registration certificate would cease to be operative. In such cases, there would be no question of cancelling the certificate of registration.

29. This Court is in agreement with the aforesaid view expressed by the Bombay High Court, and as such, is of the opinion that merely because the defaulter unit, though it had ceased to carry on business on the premises in question, had failed to apply for de-registration, the same should not, in any manner, come in the way of the Petitioners in obtaining central excise registration in respect of the premises in question. The stand adopted by the Respondent authority that in respect of the same premises, two persons cannot be registered being contrary to the provisions of law, cannot be accepted.

30. Thus, for the reasons stated hereinabove, both the grounds for refusing to grant registration to the Petitioners u/s 6 of the Central Excise Act are held to be invalid. The petition, therefore, succeeds in relation to the relief claimed vide Paragraph 6(A) of the petition, and is accordingly, allowed to the following

extent. The impugned order dated 10th May, 2010 (Annexure "B" to the petition) is hereby quashed and set aside. The Respondent No. 1 shall consider the application dated 4th May, 2010 made by the Petitioner No. 1-Company for registration under Rule 9 of the Central Excise Rules, 2002 in accordance with law, in the light of the observations made hereinabove. Insofar as the relief claimed vide Paragraph 6(B) of the petition is concerned, there is nothing to indicate that the Respondents are seeking to recover any outstanding dues of the borrower Company from the Petitioners, and as such, the question of grant of the said relief does not arise. Rule is made absolute accordingly to the aforesaid extent, with no order as to costs.