

(2001) 04 AP CK 0081

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6233 of 2001

Vijayalakshmi Enterprises

APPELLANT

Vs

Assistant General Manager, Andhra Pradesh Financial
Corporation, Hyderabad and others

RESPONDENT

Date of Decision : 25-04-2001

Acts Referred:

Customs Act, 1962 — Section 112, 17, 18, 29(2), 59
State Financial Corporations Act, 1951 — Section 29, 46B

Citation : (2001) 4 ALD 115 : (2003) 115 CompCas 950 : (2004) 52 SCL 11

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J

Bench : Division Bench

Advocate : Mr. P. Sri Raghuram, for the Appellant; Mr. Y.N. Lohita, SC for APSFC and Mr. L. Narasimha Reddy, SC for Central Government, for the Respondent

Judgement

S.B. Sinha, C.J.—In this writ petition, the petitioner herein which is a proprietary concern had sought for a declaration that a purchaser of goods in a sale u/s 29 of the State Financial Corporation Act, is not liable for the dues of the loanee payable to the Customs and Excise Authorities and for a direction upon the respondents 3 and 4 herein not to interfere with the removal of the machinery from the premises of the loanee and transport the same to the destination.

2. The establishment of M/s. Koratla Textiles Private Limited, Lingojugud village, Choutuppal Mandal, Nalgonda District was a loanee of the A.P. State Financial Corporation (hereinafter referred to as "the loanee") machinery, furniture, fixtures and stores of the said company was put in public auction in terms of the provisions of Section 29 of the State Financial Corporations Act, 1951 (for short "the Act"). The petitioner being the highest bidder, the said machinery etc., were transferred in its name.

The loanee is a 100% Export Oriented Unit having availed of certain benefits of exemption from paying the customs duty for importing the machinery. It failed to discharge an obligation to pay customs duty to the tune of Rs.52-34 lakhs. The

said failure to make payment, according to the customs authorities, would also attract penal action u/s 112 of the Customs Act for payment of penalty.

3. It is not in dispute that the said loanee executed a bond on 10-1-1994 for a period of five years which period had already expired (31-3-1998). It is also not in dispute that the customs authorities had been preventing the petitioner herein from transporting the said machinery on the ground that it has a charge there over.

4. The question which arises for consideration is as to whether in terms of Section 29(2) of the Act, the properties which were purchased in an auction sale u/s 29 of the Act would be subject to any charge under Customs Act, 1962.

5. Sri P. Sri Raghuram, learned Counsel appearing on behalf of the petitioner submitted that having regard to the provisions of sub-section (2) of Section 29 of the Act, no charge is created on the machinery in terms of the provisions of the Customs Act. In support of the said contention, reliance has been placed on a Division Bench decision of this Court in *Sitani Textiles and Fabrics (P) Ltd Vs. Asst. Collector of Customs and Central Excise, Hyderabad and Another*, . The learned Counsel would contend that the customs authorities can enforce the bond only in terms of the provisions of Section 63 of the Customs Act so long as the lien subsists. Our attention in this connection has been drawn to the provisions of Section 60 of the Customs Act as also the proviso appended to Section 61 thereof. It was pointed out that the liability of the loanee to the customs authorities is not disputed and the said liability having been accepted by the Financial Corporation, there is absolutely no reason why the respondents 3 and 4 would prevent the petitioner from lifting the machinery.

6. Sri Y.N. Lohita, learned Standing Counsel appearing on behalf of the State Financial Corporation supported the said contention and submitted that Corporation does not have any liability as the bond had expired on 31-3-1998.

7. Mr. L. Narasimha Reddy, learned Counsel appearing on behalf of the respondents 3 and 4, however, would submit that having regard to the fact that the loanee had availed of the benefit under 100% EOU, the petitioner is liable to pay the dues to the Customs Department. The status of the goods being of special nature in terms of the said scheme and further having regard to the fact that the loanee had executed a bond for exemption from paying the duty and the goods having been confined to a warehouse the same would be deemed to be in possession of the customs authorities, only. It was contended that by transfer of the properties, in terms of Section 29 of the Act, the liability to pay the customs duty is not wiped off nor the right of the Customs Department is extinguished.

8. Before advertng to the rival contentions of the parties, as noticed hereinbefore, the relevant provisions of the Customs Act may be noticed.

Sections 59, 60, 61, 62, and 63 of Customs Act reads as under:

59, Warehousing bond :--(1) The importer of any goods specified in clause (a) of

sub-section (1) of Section 61, which have been entered for warehousing and assessed to duty u/s 17 or Section 18 shall execute a bond binding himself in a sum equal to twice the amount of the duty assessed on such goods-

(a) to observe all the provisions of this Act and the rules and regulations in respect of such goods;

(b) to pay on or before a date specified in a notice of demand, --

(i) all duties, and interest, if any, payable under sub-section (2) of Section 61;

(ii) rent and charges claimable on account of such goods under this Act, together with interest on the same from the date so specified at the rate of six per cent, per annum or such other rate as is for the time being fixed by the Board; and

(c) to discharge all penalties incurred for violation of the provisions of this Act, and

(2) For the purposes of sub-section (1), the Assistant Collector of Customs may permit an importer to enter into a general bond in such amount as the Assistant Collector of Customs may approve in respect of the warehousing of goods to be imported by him within a specified period.

(3) A bond executed under this section by an importer in respect of any goods shall continue in force notwithstanding the transfer of the goods to any other person or the removal of the goods to another warehouse :

Provided that where the whole of the goods or any part thereof are transferred to another person, the proper officer may accept a fresh bond from the transferee in a sum equal to twice the amount of duty assessed on the goods transferred and thereupon the bond executed by the transferor shall be enforceable only for a sum mentioned therein less the amount for which a fresh bond is accepted from the transferee.

60. Permission for deposit of goods in a warehouse :--When the provisions of Section 59 have been complied within respect of any goods, the proper officer may make an order permitting the deposit of the goods in a warehouse.

61. Period for which goods may remain warehouse --(1) Any warehoused goods may be left in the warehouse in which they are deposited or in any warehouse to which they may be removed-

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Provided that -

(i) in the case of any goods which are likely to deteriorate, the aforesaid period of one year and thirty days, as the case may be, may be reduced by the Collector of Customs to such shorter period as the case may deem fit;

(ii) in the case of any goods which are not likely to deteriorate, the aforesaid

period of one year may, on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding six months and by the Board for such further period as it may deem fit;

Provided further that when the licence for any private warehouse is cancelled, the owner of any goods warehoused therein shall, within seven days from the date on which notice of such cancellation is given or within such extended period as the proper officer may allow, remove the goods from such warehouse to another warehouse or clear them for home consumption or exportation.

62. Control over warehoused goods :--(1) All warehoused goods shall be subject to the control of the proper officer.

(2) No person shall enter a warehouse or remove any goods therefrom without the permission of the proper officer.

(3) The proper officer may cause any warehouse to be locked with the lock of the Customs Department and no person shall remove or break such lock.

(4) The proper officer may cause any warehouse to be locked with the lock of the Customs Department and no person shall remove or break such lock.

Customs Act, therefore, does not contain any provision that the exported machineries remain charged for the payment of the duties.

Section 29 of the State Financial Corporation Act reads thus:

Rights of Financial Corporation in case of default :--(1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligation, in relation to any guarantee by the Corporation or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the right to take over the management or possession or both of the industrial concern as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property made by the Financial Corporation in exercise of its powers under sub-section (1) shall vest in the transferee all rights in or to the property transferred as if the transfer had been made by the owner of the property.

(3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of this security held by as it had with respect to the original goods.

(4) Where any action has been taken against an industrial concern under provisions of sub-section (1), all costs, charges and expenses which in the opinion of the Financial Corporation have been properly incurred by it as incidental thereto shall be recoverable from the industrial concern and the money

which is received by it shall in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and, the residue of the money to received shall be paid to the person entitled thereto.

(5) Where the Financial Corporation has taken any action against an industrial concern under the provisions of sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits, by or against the concern, and shall sue and be sued in the name of the concern.

Section 46-B of the Act which provides for a non-obstante clause read as follows:

46-B: Effect of Act on other laws :--The provisions of this Act and of any rules or orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the memorandum or articles of association of an industrial concern or in any other instrument having effect by virtue of any law other than this Act, but save as aforesaid, the provisions of this Act shall be in addition to, and not in derogation of any other law for the time being applicable to an industrial concern.

9. The concept of ownership of debtor in terms of Section 29 of the Act is limited to the extent of securing and realising loan advanced by the Corporation. When an action is taken in terms of Section 29, the ownership stands transferred free from all encumbrances. It not only confers rights but also provides for a procedure as also enforcement thereof. In the instant case, the notification of sale had been widely published. At this stage, we may notice condition No.7 mentioned in the sale confirmation letter dated 21-3-2001 addressed by the A.P. State Financial Corporation to the petitioner which reads thus:

However, the purchaser need not take responsibility for settlement of dues of Central Excise Department as the Corporation will sort out the issue with the said department depending upon the decision of the High Court in the writ petition filed by the Central Excise Department which is still pending.

The said conditions were modified by letter dated 22-3-2001

10. The submission of Mr. Narasimha Reddy to the effect that the defaulting party in collusion with the State Financial Corporation may get the property sold with a view to defraud Customs Department cannot be accepted.

In Isha Marbles Vs. Bihar State Electricity Board and Another, , it was observed :

"No doubt, dishonest consumers cannot be allowed to play tyrant with the public property but inadequacy of the law can hardly be a substitute for overzealousness."

11. Whenever a loan is raised by a loanee, the properties are mortgaged. Once the mortgaged properties are taken over, the Corporation will become the absolute owner of the property and thereafter it can sell the same in any manner

to any person. The provisions laid down in the Customs Act, as referred to hereinbefore, do not in any manner show that a statutory charge is created over the properties and as such we are of the opinion that the submission of Sri Narasimhareddy to the effect that the customs authorities can still exercise the right of lien is without any substance. Furthermore, the non-obstante clause contained in Section 46-B of the Act is of wide amplitude. In M/s. Sitani Textiles case (supra) this Court observed:

In the present case, the State Financial Corporations Act, 1951 is a special enactment whereas the Central Excise and Salt Act is a general enactment. However, in view of Section 46-B, the State Financial Corporation Act prevails over the enactments.

12. In view of the afore mentioned binding precedents, we are of the opinion that the respondents 3 and 4 cannot restrain the petitioner from lifting the property.

We, however, do not want to go into the question as regards the liability of the loanee vis-a-vis the State Financial Corporation, as the said question does not arise for consideration in this case. However, having regard to the commitment made by the State Financial Corporation in the sale confirmation letter, it is directed that it shall give an undertaking in writing that in the event in any adjudication proceeding any amount is determined against the loanee, it shall, out of the sale proceeds, pay the same.

13. The writ petition is accordingly allowed. There shall be no order as to costs.