IN THE HIGH COURT OF JUDICATURE AT BOMBAY, AURANGABAD BENCH, AT AURANGABAD.

Writ Petition No. 7315 of 2007

District : Aurangabad

M/s. M.K. International, Plot No. B-14,
MIDC Area, Near Railway Station,
Aurangabad - 431 005, a registered
partnership firm through its Partner
Shri Milind s/o. Shri Dinkar Kelkar,
Age : 49 years, Occupation : Business,
R/o. Pagaria Colony, Bansilal Nagar,
Aurangabad. .. Petitioner.

versus

1. Union of India, through its
Secretary, Ministry of Commerce,
New Delhi.

2. The Development Commissioner,
SEEPZ Special Economic Zone,
Andheri (East), Mumbai - 400 096.

3. The Commissioner,
Central Excise & Customs,
Town Centre, N-5, CIDCO,
Aurangabad.

4. The Deputy Commissioner,
Central Excise & Customs,
Town Centre, N-5, CIDCO,
Aurangabad.

5. The Regional Manager,
SICOM Ltd., Nirmal, 1st Floor,
Nariman Point, Mumbai - 400 021. .. Respondents.

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Mr. A.P. Kolte, Advocate, for the petitioner.

Mr. Alok Sharma, Counsel for respondent nos.1 to 4.

Mr. G.V. Kulkarni & Mr. A.R. Kale, Advocates,
for respondent no.5.

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CORAM : S.V. GANGAPURWALA & A.M. BADAR, JJ.

DATE : 3RD MARCH 2016

ORAL JUDGMENT *(Per S.V. Gangapurwala, J.)* **:**

1. Mr. Kolte, the learned Counsel for the petitioner, submits that the petitioner pursuant to the advertisement issued by respondent no.5 in daily newspaper dated 29-12-2006, had participated in the said public auction. The petitioner was successful bidder and was issued sale certificate on 25-4-2007. The said sale was under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 **(hereinafter referred to as "SARFAESI Act" for the sake of brevity)**. The learned Counsel submits that the respondent - Excise Department issued order / letter dated 8-10-2007 directing the present petitioner to pay the excise dues to the tune of Rs. 12.45 Lakhs of the erstwhile owner. The same is assailed in the present Writ Petition. According to Mr. Kolte, the learned Counsel for the petitioner, the petitioner an auction purchaser of only plant, machinery, land building and not purchaser of the ongoing business of the erstwhile owner, is not liable to pay the excise dues of the erstwhile owner. The learned Counsel relies

on the judgment of the Hon'ble Apex Court in the case of ***Rana Girders Ltd. Vs. Union of India***, reported in ***2013 (295) E.L.T. 12 (S.C.)***. According to the learned Counsel, reliance of the respondent on Section 11 of the Central Excise Act is misplaced.

2. Mr. Sharma, the learned Counsel, for respondent nos.1 to 4 - Department, submits that as per Section 11 of the Central Excise Act, the Government dues can be recovered from the auction purchaser. The intention of legislation by enacting the said provision was that the Government dues can be recovered from the auction purchaser. According to the learned Counsel, the order impugned in the present petition has been rightly passed and the petitioner is liable to pay the excise dues of M/s. Aurangabad Cables Ltd i.e. the erstwhile owner.

3. The issue involved in the Writ Petition is no longer *res integra* in view of the judgment of the Hon'ble Apex Court in the case of ***Rana Girders Ltd.***, referred supra. It has been held by the Hon'ble Apex Court that dues of the Excise Department become payable on manufacturing of excisable items by the erstwhile owner. As such, they are in respect of those items produced and not on plant and machinery which was used for the purpose of manufacture. The Hon'ble Apex Court in the said case categorically held that the purchaser of a plant and machinery in an auction is not liable to pay excise dues of its erstwhile owner.

4. In the light of above, the Writ Petition is allowed.

(a) The impugned order / communication dated 8-10-2007 (Exhibit "L" with the petition) is quashed and set aside.

(b) The amount of Rs. 7,90,000/- deposited by the petitioner, in this Court, pursuant to the orders dated 5-2-2009 of this Court, is allowed to be withdrawn by the petitioner, along with accrued interest, if any.

5. Rule is made absolute in the above terms. No costs.

(A.M. BADAR)	**(S.V. GANGAPURWALA)**
JUDGE	**JUDGE**

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