THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Writ Petition No.3779 of 2006

Order: (**Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan**)

The petitioner purchased the assets of M/s. Sri Rama Laboratories Pvt. Ltd. in an auction conducted by the Andhra Pradesh State Financial Corporation (A.P.S.F.C.) under Section 29 of the State Financial Corporations Act, 1951 (for short "the Act"). A sale deed was executed by the A.P.S.F.C. in favour of the petitioner whereby, for a consideration of Rs.17.50 lakhs, the land and buildings auctioned by the A.P.S.F.C. was conveyed to the petitioner.

On the ground that M/s. Sri Rama Laboratories Pvt. Ltd., were due certain amounts under the Central Excise Act, 1944 (for short 'the Central Excise Act'), notice was issued to the petitioner herein, calling upon them to pay the said amounts. The petitioner has invoked the jurisdiction of this Court questioning the action of the Deputy Commissioner, Customs and Central Excise in seeking to recover the dues of M/s. Sri Rama Laboratories Pvt. Ltd. from them.

Purchase of lands and buildings in an auction conducted by the A.P.S.F.C, or from a bank, does not attract the proviso to Section 11 of the Central Excise Act, as has been held by the Supreme Court in **Rana Girders Ltd., vs. Union of India and Others**[1], and by a Division Bench of this Court in **Kohinoor Ropes Pvt. Ltd., vs. Commissioner of Customs and Central Excise, Guntur and Others**[2].

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[1] (2013) 10 SCC 746
[2] 2016 (3) ALD 169 (DB)

Smt. Sundari R. Pisupati, learned Standing Counsel for Central Excise, would submit that since, in addition to land and building, plant and machinery has also been sold it is, in effect, a transfer of the unit and not sale of assets *per se*; and, consequently, the Central Excise authorities are entitled to recover the amounts, due from M/s. Sri Rama Laboratories Pvt. Ltd. under the Act, from the petitioner herein.

We must express our inability to agree. Transfer of an undertaking, from one company to another, can only be effected in terms of a scheme sanctioned under the provisions of the Companies Act, 1956 and sale of assets, including land, buildings, plant and machinery, by the A.P.S.F.C, in the exercise of its powers under Section 29 of the Act, would not amount to transfer of an undertaking.

We see no reason, therefore, to take a view different from that taken in the aforesaid judgments of the Supreme Court and the Division Bench of the High Court. Suffice it to make it clear that this order shall not preclude the Central Excise authorities from taking action in accordance with law against the finished goods, if any, lying in the premises of the petitioner-company, if such finished goods belong to M/s. Sri Rama Laboratories Pvt. Ltd.

The impugned demand notice is set aside. The writ petition is allowed. However, in the circumstances, without costs. The miscellaneous petitions pending, if any, shall also stand closed.

(RAMESH RANGANATHAN, ACJ)

(A. SHANKAR NARAYANA, J)

23rd November, 2016
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Date: 23.11.2016

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