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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 143 OF 2015

The Commissioner Of Central Excise, Thane-I ...**Appellant**

Versus

M/s. Monomer Chemical Industries Pvt.Ltd. ...**Respondent**

Mr. M. Dwivedi, i/b Ms. Shalaka Gujar, for the Appellant.

Mr. Sunil G. Agarwal, for the Respondent.

CORAM : ABHAY S. OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 6 September 2017

ORDER :

1. Heard the learned Counsel appearing for the Appellant. The Appellant Revenue has taken an exception to the

judgment and order dated 17 October 2014 passed by the Customs, Excise and Service Tax Appellate Tribunal (for short "***Appellate Tribunal***").

2. M/s. Akasha Syncotex Limited was a lessee of a plot in an industrial estate owned by the Maharashtra Industrial Development Corporation. The said Company had obtained a registration under Section 6 of the Central Excise Act, 1944 (for short "***the said Act***") read with Rule 9 of the Central Excise Rules, 2002 (for short "***the said Rules***"). The said Company transferred its rights in respect of the plot to the Respondent after obtaining consent of the Maharashtra Industrial Development Corporation. On 7 September 2009, the Respondent applied for registration under Section 6 of the said Act in respect of the same plot. The show cause notice was issued to the Respondent calling upon the Respondent to show cause as to why the Application for registration should not be rejected. By order dated 24 November 2009, the Assistant Commissioner held that the Respondent is entitled to grant of

the registration. An Appeal was preferred by the Revenue before the Commissioner (Appeals), which was allowed. Being aggrieved by the order in Appeal that an Appeal was preferred by the Respondent before the Appellate Tribunal, which has been allowed under the impugned order.

3. The submission of the learned Counsel appearing for the Revenue is that the earlier registration granted in respect of the same premises to the predecessor of the Respondent was in subsistence. The submission is that unless the registration is cancelled in accordance with law, a fresh registration could not have been granted to the Respondent in respect of the same premises. The submission of the learned Counsel appearing for the Appellant is that the predecessor of the Respondent ought to have de-registered itself by making a declaration in the forms specified in Annexure III to the said Rules and by depositing the registration certificate with the concerned authority. The submission is that the impugned order is erroneous and the registration could not have been granted to the Respondent.

4. We have considered the submissions. The Assistant Commissioner, Central Excise while holding that the Respondent was entitled to grant of registration, recorded a finding that the show cause notice issued to the predecessor of the Respondent is pending adjudication and there was no enforceable demand against the predecessor of the Respondent. In fact, in paragraph 26 of the order, he has recorded a finding of fact that the predecessor of the Respondent has surrendered its Registration Certificate on 18 June 2009 along with Annexure III and an undertaking/bond to abide by the liability of the Government dues, if any, after the same is confirmed. Another finding of fact recorded is that the plot was transferred in the name of the Respondent by the Maharashtra Industrial Development Corporation (Lessor) on 20 January 2009 before the show cause notice was issued demanding duty from the predecessor of the Respondent. It was also observed that there is no recoverable demand. We have perused the order of the Commissioner (Appeals), which was impugned before the Appellate Tribunal. Paragraph 4 of the said order records that

the show cause notice cum demand notice issued to the predecessor of the Respondent was pending adjudication. The Commissioner also noted that the predecessor of the Respondent has applied for de-registration of the registration granted under Section 6 of the said Act. The Commissioner observed that the matter wherein arrears of Government Revenue is involved, is pending against the predecessor of Respondent. That is the main ground on which he interfered with the order of Assistant Commissioner.

5. In the light of the finding of facts recorded by the Assistant Commissioner as well as Commissioner (Appeals) that the issue will have to be decided.

6. Our attention is invited to a decision of the Division Bench of this Court in ***Tata Metaliks Limited Vs. Union of India***[1]. In paragraph 7, the Division Bench has held thus :-

> *"A perusal of Section 6 makes it absolutely clear that who has to be registered is the prescribed person.*

1 ***2009 (234) ELT 596(Bom.)***

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 deregistration. Would that mean in the absence of the person who has closed or sold the business or premises, applying for deregistration, there is no jurisdiction to grant another 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 deregistration. 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."*

(underline supplied)

7. There is one more relevant decision of the Division Bench of the High Court of Judicature at Andhra Pradesh in ***Modi RJR Ltd. Vs. Commissioner of Central Excise, Hyderabad***[2], In paragraphs 6 and 7 of the said decision, the Andhra Pradesh High Court held thus :-

"6. Though the learned Counsel for the respondents contended that in view of the existing registration

2 ***1999 (111) ELT 348 (A.P.)***

which has not been surrendered, second registration cannot be issued. There is nothing which can be read into this Rule that it is a registration certificate issued for the purpose of carrying out a trade in a particular premises by a particular party. There is no statutory provision pointed out either under the Act or the Rules that in the premises if a particular person is having a registration, second registration certificate cannot be issued. According to sub-rule (11) if any holder of a certificate has violated any rule or has found to have committed the breach of the condition of the Act or the Rules or has been convicted of an offence under Section 161 read with Section 109 or with Section 116 of the IPC the registration certificate may be revoked. It no where confers jurisdiction on the authorities not to grant the certificate. It empowers the authorities only for revocation or suspension of the certificate in the particular circumstances provided by sub-rule (11) *of Rule 174.*

7. *Thus in view of the observations made above, we find that the respondents have no jurisdiction to decline to issue the certificate of registration or return the application on the ground that the petitioners' predecessor was in arrears. Without quantifying his arrears or taking into consideration his dues or taking any steps for cancellation of his certificate or revocation of his certificate under sub-rule (11), the authorities cannot decline to issue a registration certificate as envisaged by Rule 174(9) to the petitioner. As a necessary consequence, the respondents are directed to consider the case of the petitioners for issuance of an appropriate certificate in accordance with law within 15 days from the date of submission of the application. Otherwise, the deeming provision will come into operation. The Counsel for the petitioners makes a request that the*

> *petitioners will re-submit the application within one week from today. Permission is accorded. The writ petition is disposed of accordingly at the admission stage.”*

8. We find that the decision of this Court in the case of ***Tata Metaliks Limited*** (supra) has been followed by several other High Courts.

9. After having perused Rule 9 of the said Rules and the Circular issued by the Central Board Customs, we find that the issue of alleged liability of the predecessor of the Respondent to pay demand was completely irrelevant for the consideration of Application made by the Respondent under Section 6 of the said Act and Rule 9 of the said Rules. If the Respondent had complied with all the requirements of law, there was no impediment in the way of granting registration to the Respondent notwithstanding pending proceedings against its predecessor for adjudication of the demand made from the

predecessor. Even if, the registration is granted to the Respondent in respect of the premises for which his predecessor was granted registration, the State can always continue with the demand/recovery proceedings and recover the dues in accordance with law. If the liability to pay the dues is attached to the plot transferred in the name of the Respondent, the said liability can be always enforced, which has nothing to do with the merits of the application for registration made by the Respondent.

10. Hence, in our view, the Appellate Tribunal was right in holding against the Appellant. No substantial question of law much less a question of law arises in the Appeal and the same is accordingly, dismissed.

[RIYAZ I. CHAGLA J.] **[ABHAY S. OKA, J.]**