THE HONOURABLE SRI JUSTICE BATTU DEVANAND
AND
THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA

WRIT PETITION No.18606 of 2005

O R D E R: *(Per Hon'ble Sri Justice Battu Devanand)*

1. The Writ Petition is filed seeking to declare the proceedings in C.No.DOR.No.22/95-ARC, dated 29.04.2005 and also consequential demand notice, dated 29.04.2005 in C.No.DOR.No.22/95-AF (ARC) issued by the respondent No.3, as illegal, arbitrary, unconstitutional, without jurisdiction, void abinitio and violative of petitioner's fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India and prayed to set-aside the same.

2. Heard Smt.Jyothi Eswar Gogineni, learned counsel for the petitioner, Sri.B.V.Chalapathi Rao, learned standing counsel for the respondent Nos.1 to 3/Customs and Central Excise and Sri.G.R.Sudhakar, learned Standing Counsel for the respondent No.4/A.P.State Finance Corporation and carefully perused the material available on record.

3. Basing on the submissions of the learned counsel and material available on record, the following facts are undisputed.

[a] One M/s.Eswar Laminates Private Ltd., secured a term loan from the respondent No.4 - A.P. State Finance Corporation and mortgaged the properties of the said firm to the respondent No.4 by executing equitable mortgage deed and by depositing the title deeds.

[b] The said mortgagor committed default in payment of installments to the respondent No.4.

[c] The respondent No.4 take over the mortgaged properties in exercise of the powers conferred to it under Section 29 of the State Financial Corporation Act. Thereafter, the respondent No.4 issued an advertisement for sale of the immovable property for an extent of Ac.1.95 cents in R.S.No.12/2, Peda Avutapalli Village, Ungutur Mandal, Krishna District in various newspapers inviting tenders from the public.

[d] The Writ Petitioner had made highest offer for purchase of the said property for Rs.17.50 lakhs and the same was accepted by the respondent No.4.

[e] The petitioner had paid the entire sale consideration and the respondent No.4 executed a registered sale deed in favour of the petitioner and conveyed the title of the said property on 12.02.2004 and also delivered the possession of the said property.

[f] The respondent No.2-Assistant Commissioner of Customs and Central Excise, Vijayawada, Krishna District, issued proceedings, dated 29.04.2005 in C.No.DOR No.22/95/ARC and C.No.DOR.No.22/95-AE(ARC) to the petitioner stating that M/s.Eswar Laminates Private Ltd., has to pay a sum of Rs.18,42,221/- towards duty and Rs.10,00,000/- towards penalty as per the Commissioner’s OIO No.1/99, dated 03.02.1999 and demanded the petitioner to pay the said amount as successors unit/persons in the light of the judgment of the Hon’ble

Supreme Court of India in M/s.Macson Marbles Pvt.Ltd., vs. Union of India in Civil Appeal No.1463/1997, dated 11.11.2003. Aggrieved by the said proceedings of the respondent No.2, dated 29.04.2005, the present Writ Petition has filed.

4. Smt.Jyothi Eswar Gogineni, learned counsel for the petitioner would submit that the auction notice was published on 13.04.2003 and the petitioner submitted his quotation on 09.07.2003 and his tender was accepted on 03.09.2003 and immediately, paid the amount and a sale deed was executed on 12.03.2004.

5. Learned counsel for the petitioner would further submit that in fact the petitioner purchased the subject property from the respondent No.4 on 12.02.2024 and as on the date of purchase, there was no provision in the Act, to impose any embargo on the sale of property belonging to M/s.Eswar Laminates Private Ltd., by the respondent No.4 or any claim or demands pending against the said firm can be attached to such property as on that date. She contends that being so, the proviso to Section 11, which became effective from 10.09.2004, cannot be invoked by the respondents to demand either any duty or penalty due by the said firm from the subsequent purchaser.

6. Learned counsel submits that the respondent Nos.1 to 3 are empowered to serve a notice of demand on the defaulter i.e.,M/s.Eswar Laminates Private Ltd., and in case if he does not pay the sums demanded by them, then only the properties belonging to the said firm

can be detained and sold by them for the realization of the said sums. The respondent has not served any notice on the said firm and directly served notice on the petitioner, which is neither responsible nor liable for any sums to the respondent Nos.1 to 3.

7. Learned counsel further submits that the Apex Court in the case of ***M/s.Macson Marbles Pvt.Ltd., vs. Union of India***[1] has upheld the action of the Department under Rule 230 of the Central Excise Rules and held that the movable properties mentioned in the said Rule can be detained and sold even in the hands of the transferee. She vehemently contends that as the petitioner purchased the land and buildings only from the respondent No.4. The decision relied on by the respondent Nos.1 to 3 is not applicable to the present case and accordingly, sought to set-aside the impugned notices by allowing the Writ Petition.

8. Learned Standing Counsel for the respondent Nos.1 to 3 would submit that M/s.Eswar Laminates Private Ltd., is liable to pay the central excise duties and penalties amounting to Rs.28,42,221/- in terms of order No.1/99, dated 03.02.1999 passed by the Commissioner of Customs and Central Excise, Guntur and that recovery proceedings were initiated in terms of Section 142(1)(C)(ii) of the Customs Act, 1962 and issued a demand notice to Smt.K.Rani, Director of the company on 30.11.1999.

9. He would further submit that during the course of recovery proceedings, the unit was taken into custody by the official liquidator

[1] **(2008) 15 SCC 481**

consequent upon the order, dated 19.04.1999 of the erstwhile High Court of Andhra Pradesh in Company Petition No.206/1998. Consequently, the Central Excise Department filed a preferential claim in Form-66 on 21.01.2000 before the official liquidator claiming the dues liable to be paid by the unit. A notice of demand under Section 142(1)(C)(ii) of the Customs Act, 1962 was also served on the official liquidator. The official liquidator, in his letter, dated 29.12.2004 enclosing a copy of the order, dated 30.01.2001 in C.A.No.897/1999 informed that as per the directions of the High Court of Andhra Pradesh, the assets of the unit were handed over to the respondent No.4 in liquidation. Thereafter, a notice was sent to the respondent No.4 for recovery of dues and the respondent No.4 vide letter dated 23.12.2004 informing that they being secured creditors have first charge and hence adjusted the sale proceedings of the unit towards their dues. Under these circumstances, the respondent No.2 issued notice to the Writ Petitioner and the respondent No.4 along with M/s.S.M.Industries, Secunderabad, who are the purchasers of the machinery of the unit, demanding dues.

10. Learned Standing Counsel would submit that the provision of Section 142(1)(C)(ii) of the Customs Act, 1962 made applicable to the matters of recovery of Central Excise dues in terms of notification No.68 of the Central Excise Act, 1962 provides for recovery of immovable and movable property of the defaulter. In view of the same, he would submit

that there is no merit in the contention of the petitioner that the law does not provide for restraining immovable property.

11. Learned Standing Counsel further submits that as per the provisions of the Customs Act, 1962, notices have been served on the defaulters including the official liquidator for recovery of arrears. In fact, the property could not have been handed over by the official liquidator to any person pending payment of arrears as per rule 9 of the Customs Attachment of property of Defaulters for recovery of (Government Dues) 1995. As such, handing over the property to the respondent No.4 by the official liquidator and the process of sale initiated by the respondent No.4 are void in the eyes of law.

12. He further contends that as per the notice issued to the petitioner, it is proposed to recover the arrears by resorting to the provisions of Section 142(1)(C)(iii) of the Customs Act, 1962 and therefore, the provision of Rule 230 of the erstwhile Central Excise Rules, 1944 and the Section 11 of the current period are squarely applicable for recovery of arrears as the provisions of Section 11 do not stipulated that the provision would be applied only for the case of arrears arising after passage of the enactment. As such, he contends that it is settled law that no interpretation should be assumed unless specifically provided for and accordingly, the contention that the said provisions would be applicable only for the arrears arising after enactment of the said legislation is not legally tenable. Accordingly, he would submit that the action initiated by

the Department in issuing the impugned notice is legal and appropriate and accordingly, he sought to dismiss the Writ Petition.

13. Sri.G.R.Sudhakar, learned Standing Counsel for the respondent No.4 would submit that the assets of the unit were seized in view of the default committed by the borrower and thereafter, the said mortgaged property was sold by the respondent No.4 to the petitioner herein in a public auction conducted on 12.02.2004 for an amount of Rs.17.50 lakhs. The plant and machinery was sold in favour of M/s.Sundar Synthetics Pvt.Ltd., for a sale consideration of Rs.8.91 lakhs during the month of January, 2003 and possession of land and building was delivered to the petitioner on 20.02.2003.

14. Learned Standing Counsel further submits that in fact the said unit was taken into custody by the official liquidator and pursuant to the orders of the erstwhile High Court of Andhra Pradesh, dated 19.04.1999 in Company Petition No.206/1998. The Central Excise filed a preferential claim in Form-66 on 21.01.2000 before the official liquidator. The official liquidator vide letter, dated 29.12.2004 as per the order of the High Court, dated 30.01.2001 in C.A.No.897 of 1999 , handed over the assets to the respondent No.4 and informed that they being the secured creditors have first charge. Thereafter, the respondent No.4 initiated steps for recovery of the dues, due to be payable by the borrower unit from the property sold in auction on 12.02.2004. Thereafter, the respondent No.2 issued the impugned notice, dated 24.09.2005 to the petitioner, who purchased the

land and building purchased in the auction. Learned counsel would submit that the impugned notice suffers from several infirmities and the respondent No.1 to 3 did not have any jurisdiction or power to issue the same.

15. Learned Standing Counsel for the respondent No.4 contends that in terms of Rule 230 (2) of the erstwhile Central Excise Rules, 1944, the plant and machinery of the person who is due to the department can be detained even after the change of ownership, is due to the department has been repealed. Under the new Central Excise Rules 2002, similar provision does not exist. Hence now, the erstwhile excise rules are not at all applicable. As such neither the petitioner nor the respondent No.4 is responsible or liable to pay the alleged dues of the company/unit against the alleged claim made by the Excise Department as the petitioner has not purchased any excisable goods, plant and machinery etc., belonging to the unit.

16. Learned Standing Counsel for the respondent No.4 further contends that the decision of the Apex Court in the case of *M/s.Macson Marbles' case* as (1st cited) *supra* relied by the Department has been dealt by the Apex Court in the case of ***Rana Girders Limited vs. Union of India***[2] and held that Finance Corporation being a secured creditor had priority over the excise dues and that the appellant had not purchased the entire unit as a business as per the statutory frame work and as such,

[2] **(2013) 10 SCC 746**

there was no liability to discharge the dues of the excise department. Learned counsel finally submits that there are no merits in the arguments of the respondent Nos.1 to 3 and the judgment of the Apex Court in Rana Girders' case (2nd cited supra) is squarely applicable to the present case of the Writ Petitioner and accordingly, sought to set-aside the notice issued by the Customs and Excise Department and prayed to allow the Writ Petition.

17. Having considered submissions of the respective counsels and as there is no dispute with regard to the facts of the case, in our considered view, the only issue to be considered herein is:

> *"whether the respondent No.4-The A.P. State Finance Corporation would have priority being the secured creditor by virtue of deed of mortgage or the Central Excise in respect of its view having regard to the Rule 230(2) of the Central Excise Rules?*

18. In fact, the issue involved in this present Writ Petition is no longer *res integra.* The Hon'ble Supreme Court of India and various High Courts have considered this issue time and again and held that secured creditor had a priority than the charge of the Central Excise. Prior to the Finance Act, 2004, there was no provision in the Customs Act, 1962 to deal with the situation, where the person, who is due of any sum to the Government transfers his plant and machinery to a third person. Section 11 of Central Excise Act, 1994 introduced by virtue of Section 80 of Finance Act, 2004 which came into effect from 10.09.2004 empowering the Department to

recover the dues from the borrower i.e., M/s.Eswar Laminates Private Ltd., from all exercisable goods, materials, plants, machinery, preparations, 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 dues or other sums recoverable or due from such predecessor at the time of such transfer or otherwise disposal of change. But, in the present case, the petitioner has purchased land and building on 12.02.2004, much prior to the amendment to Section 11 of the Central Excise Act, 1994, which came into effect from 10.09.2004. It is also an admitted fact that the petitioner did not purchase the plant and machinery of the borrower from the respondent No.4. The petitioner has purchased the land and building only.

19. In the decision relied on by the Excise Department of the Supreme Court of India in the case of Macson's case (cited 1st supra) and claimed priority of charge, claiming the arrears of the unit to be recovered as crown debt, that the liability can be fastened on the person, who had purchased the entire unit as ongoing concern and not a person, who had purchased the land and building or plant and machinery of the erstwhile concern.

20. Learned Standing Counsel for the respondent No.4 relied on the judgment of the Apex Court in Rana Girders' case (cited 2nd supra) wherein, it is held that the Corporation being a secured creditor had priority over excise dues and that the appellant had purchased the entire unit as a business. As per the statutory framework, there was no liability for discharging the dues of the excise department. The relevant paragraphs of the said judgment are extracted herein under:

> *"16. Whether UPFC would have priority being a secured creditor by virtue of deed of mortgage or the Central Excise in respect of its dues having regard to Rule 230(2) of the Central Excise Rules, came up for consideration before this Court in State of Karnataka v. Shreyas Papers (P) Ltd. Dealing with the provisions of Rule 230 of the Excise Rules, the Court held that this provision authorises detention of all excisable goods, materials, preparations, plant, machinery, vessels, utensils, implements and articles, in the custody or possession of the person or persons carrying on such trade or business or from person succeeding the business or trade or part thereof for such time till dues are paid or recovered. However, the Rule does not in any way create a charge over any of the goods enumerated therein. After explaining the term 'charge' as defined in Section 100 of the Transfer of Property Act, it was held that charge would be different from the word "detained". As Rule 230 only empowers detention and there was no other provision under the Central Excise Act or the Rules which envisages to create any charge over the assets of a unit to enable the realisation of the Central excise duty on top priority. The Court held that UPFC had a priority being a secured creditor on the one hand and the Central Excise having no "charge" over the property. The Court specifically took note of the fact that the petitioner in that case was not the successor of the erstwhile owner in business or trade and having acquired the property without any charge independent of business or trade of the previous owner, was not a person in custody or possession of the property as a successor of the previous owner against whom there was a demand of excise duty.*
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> *20. Coming to the liability of the successor in interest, the Court clarified the legal position enunciated in Macson by observing that such a liability can be fastened on that person who had purchased the entire unit as an ongoing concern and not a person who had purchased land and building or the machinery of the erstwhile concern. This distinction is brought out and explained in para 19 and it would be useful for us to reproduce herein below:*

(SICOM Ltd. Case, SCC pp.131-32, para 19)

"19. Reliance has also been placed by Ms.Rao on Macson marbles (P) Ltd., wherein, the dues under the Central Excise Act were held to be recoverable from an auction-purchaser, stating: (SCC pp.483-84, paras 10-11):

> *'10. We are not impressed with the argument that the State Act is a special enactment and the same would prevail over the Central Excise Act. Each of them is a special enactment and unless in the operation of the same any conflict arises this aspect need not be examined. In[this] case no such conflict arises between the Corporation and the Excise Department. Hence, it is unnecessary to examine this aspect of the matter.*
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> *11. The Department having initiated the proceedings under Section 11-A of [this] Act adjudicated liability of respondent No.4 and held respondent 4 is also liable to pay penalty in a sum of Rs.3 lakhs while the excise dues liable would be in the order of a lakh or so. It is difficult to conceive that the appellant had any opportunity to participate in the adjudication proceedings and contend against the levy of the penalty. Therefore, in the facts and circumstances of this case, we think it appropriate to direct that the said amount, if already paid, shall be refunded within a period of three months. In other respects, the order made by the High Court shall remain undisputed. The appeal is disposed of accordingly.'*

The decision, therefore, was rendered in the facts of that case. The issue with which we are directly concerned did not arise for consideration therein. The Court also did not notice the binding precedent of Dena Bank as also other decisions referred to hereinbefore."

21. A harmonious reading of the judgments in Macson and SICOM would tend us to conclude that it is only in those cases where the buyer had responsible to discharge the liability of Central Excise as well. Otherwise, the subsequent purchaser cannot be fastened with the liability relating to the dues of the Government unless there is a specific provision in the statute, claiming "first charge for the purchaser". As far as the Central Excise Act is concerned, there was no such specific provision as noticed in SICOM as well. The proviso to Section 11 is now added by way of amendment in the Act only w.e.f. 10.09.2004. Therefore, we are eschewing our discussion regarding this proviso as that is not applicable insofar as present case is concerned. Accordingly, we thus, hold that insofar as legal position is concerned, UPFC being a secured creditor had priority over the excise dues. We further hold that since the appellant had not purchased the entire unit as a business, as per the statutory framework he was not liable for discharging the dues of the Excise Department.

23. We may notice that in the first instance it was mentioned not only in the public notice but there is a specific clause inserted in the sale deed/agreement as well, to the effect that the properties in question are

being sold free from all encumbrances. At the same time, there is also a stipulation that "all the statutory liabilities arising out of the land shall be borne by the purchaser in the sale deed" and "all the statutory liabilities arising out of the said properties shall be borne by the vendee and the vendor shall not be held responsible in the agreement of sale". As per the High Court, these statutory liabilities would include excise dues. We find that the High Court has missed the true intent and purport of this clause. The expressions in the sale deed as well as in the agreement for purchase of plant and machinery talk of statutory liabilities "arising out of the land" or statutory liabilities "arising out of the said properties" (i.e., the machinery). Thus, it is only that statutory liability which arises out of the land and building or out of plant and machinery which is to be discharged by the purchaser. Excise dues are not statutory liabilities arising out of the land and building could be in the form of the property tax or other types of cess relating to property, etc. Likewise, statutory liability arising out of the plant and machinery could be the sales tax, etc. payable on the said machinery. As far as dues of the Central Excise are concerned, they were not related to the said plant and machinery or the land and building and thus did not arise out of those properties. Dues of the Excise Department became payable on the manufacturing of excisable items by the erstwhile owner, therefore, these statutory dues are in respect of those items produced and not the plant and machinery which was used for the purpose of manufacture. This fine distinction is not taken note of at all by the High Court."

21. The Apex Court, having considered the judgments in the case of Macson's case (cited 1st supra) and ***Union of India vs. Sicom Limited***[3] in so far as the legal position is concerned, the UPFC being a secured creditor had priority over the excise dues. It is further held that since the appellants had not purchased the entire unit as a business, as per the statutory frame work, he was not liable for discharging the dues of the excise department. At paragraph No.23 of the aforesaid judgment, the Apex Court clarified that the statutory liabilities are arising out of the land, building or out of plant and machinery, which is to be discharged by the purchaser. It is also clarified that excise dues are not statutory liabilities which arise out of land and building or the plant and machinery. The Apex

[3] **(2009) 2 SCC 121**

Court made it clear that the dues of the central excise are concerned, they were not related to the said plant and machinery or the land and building and thus, did not raise out of those priorities.

22. As seen from the facts of the case, the petitioner purchased the land and buildings of the unit from the respondent No.4, the secured creditor. By following the decision of the Apex Court in case of Rana Girders' case (cited 2nd supra), we deem it appropriate to hold that the respondent Nos.1 and 3 are not entitled to issue notice impugned herein to the Writ Petitioner demanding to pay the dues and penalty under the excise act payable by the borrower company i.e., M/s.Eswar Laminates Private Ltd. We also hold that the respondent No.4 being the secured creditor had priority over the excise dues.

23. For the reasons stated above, in our considered view, the notice, dated 29.04.2005 issued by the respondent No.2 would not sustain in the eye of law and accordingly, it is liable to be quashed.

24. Accordingly, the Writ Petition is allowed and consequentially, the notice, dated 29.04.2005 is hereby quashed.

25. There shall be no order as to costs.

Consequently, miscellaneous applications, pending if any, shall stand closed.

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JUSTICE BATTU DEVANAND

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JUSTICE TUHIN KUMAR GEDELA

Date: 29/10/2026
PKR

THE HONOURABLE SRI JUSTICE BATTU DEVANAND
AND
THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA

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WRIT PETITION No.18606 of 2005

Date: 29/10/2026
PKR