

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 1

Customs Appeal No. 12564 of 2014-DB

(Arising out of OIO-AHM-EXCUS-003-COM-069-13-14 Dated 31.03.2014 passed by
Commissioner of Central Excise-AHMEDABAD-I)

Fmn Enterprise

Aman Park, Dahej Road, Bhuva Chokdi,
Nr, Narmada Chowkdi,
BHARUCH, GUJARAT

.....Appellant

VERSUS

Commissioner of Customs.-Ahmedabad

CUSTOM HOUSE,
NEAR ALL INDIA RADIO NAVRANGPURA,
AHMEDABAD, GUJARAT

.....Respondent

WITH

- (i) Customs Appeal No.12809 of 2014-DB (Sahid Ibrahim Dawood)
- (ii) Customs Appeal No.13134 of 2014-DB (Roshanlal Gupta & Sons Pvt. Ltd.)
- (iii) Excise Appeal No.12563 of 2014-DB (Fmn Enterprise)
- (iv) Excise Appeal No.12808 of 2014-DB (Sahid Ibrahim Dawood)
- (v) Excise Appeal No.12946 of 2014-DB (Roshanlal Gupta & Sons Pvt. Ltd.)

APPEARANCE:

Shri P M Dave, Advocate, Shri Dhaval Shah, Advocate & Shri Parth Rachchh,
Advocate appeared for the Appellants

Shri Girish Nair, Assistant Commissioner (AR) appeared for the Respondent

CORAM:

HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 11402-11407/2025

DATE OF HEARING: 12.08.2025

DATE OF DECISION: 08.12.2025

SOMESH ARORA

1. The present appellants in the bunch of appeals are purchasers during the course of official liquidation of various assets of M/s. Varun Seacon Ltd., a 100% EOU, which was earlier engaged in the manufacture of Refrigerated and Plain Marine Freight Containers. They were procuring duty free goods from various sources. They stopped their functioning in the year 1998 and Board of Industrial and Financial Reconstruction (BIFR) vide their order dated 15.03.2000 declared the company as a sick industrial unit. Consequently, Hon'ble High Court of Gujarat vide order dated 07.03.2002, appointed an official liquidator in order to sell the assets other than land, trees, records and

time keeper's office for consideration of 14.08 Crs. in favour of bidder M/s. Roshanlal & Sons Pvt. Ltd. (who is also appellant before us), subject to fulfilment of condition that, "all dues, taxes, cess, if any, applicable on the sale of assets, shall be paid by the purchaser." Consequently, M/s. Roshanlal & Sons and their appointee Shri Shahid Ibrahim Dawood, partner of M/s. FMN Enterprises, who is also appellant before us to cover all the assets and properties as were handed over by official liquidator, through letter dated 20.10.2005. The department viewing that the purchasers were still liable to pay the duty on the goods purchased by them have proceeded to recover the same. The demands were confirmed vide order dated 31.03.2014 by the Commissioner with interest and penalty and component of demand of excise duty was jointly and severally directed to be recovered from the appellants i.e. M/s. FMN Enterprises and M/s. Roshanlal & Sons Pvt. Ltd. Aggrieved by the order, the appellants are before us.

2. Appellants have mainly taken the ground that recovery cannot be made from the auction-purchasers of the assets of the company and taxes cannot be recovered. Since claim if any, were required to be filed before the liquidator until the property was sold as per the provision of Section 457 of the Companies Act. Once the property is sold, there cannot be any duty recovered from the assets. That duties cannot be passed on to successor-purchaser of the assets as per various case laws in this regard. Only if unit is sold as such as a running concern and not when assets are sold, can question of recovery of duty arise. They have placed reliance in this regard on various case laws as follows:-

- Collector of Customs Vs. Dytron (India) Ltd. as reported in 1999 (108) ELT 342 (Cal.)
- M/s. Dollar Industries (Spinning Division) Vs. Assistant Commissioner as reported in 2021 (375) ELT 455 (Mad.)

- Sanjeev Mahajan, Janak Raj Gupta & Co. Ltd. as reported in 2019 (6)
TMI 260- CESTAT Ahmedabad

2.1 Also on the proposition, that an auction purchaser is not importer and during the purchase of the properties of a wound up company, he cannot be considered as importer, they seek to place reliance on the following decisions:-

- Inderjit Nagpal Vs. Commissioner of Customs as reported in 2017 (357)
ELT 1029
- Nalin Z. Mehta Vs. Commissioner of Customs as reported in 2014 (303)
ELT 267
- Schlumberger Asia Services Ltd as reported in 2015 (330) ELT 369.

2.2 They further with the help of case law pleaded that the extended period of limitation or penalty could not be imposed on them even if, goods were covered by general bond, as an EOU. The demand for duties has to be made as per the statutory provisions and subject to limitation etc. and that general bond can only be applicable against the importer and not against the purchaser of assets.

3. Learned AR on the other hand seeks to rely on the following decisions:-

- 2012 (279) ELT 220 (Tri-Chennai) as reported in Sundaram Finance Ltd Vs. CC, Chennai
- 1999 (113) ELT 753 (SC) as reported in Kiran Spinning Mills Vs. CC
- 2009 (244) ELT 37 (Bom) as reported in Jaynat Building & Architectural Products P Ltd Vs. Union of India

3.1 His point of emphasis is that the bonded goods in EOU cannot be removed without payment of duty and that the special circumstances in which an EOU operates and binds himself for the duty cannot be ignored while clearing the goods from the premises of bonded EOU to anyone.

4. We have gone through the rival submissions. We find that Hon'ble High Court of Gujarat vide its order dated 07.03.2002 directed winding up of M/s. Varun Seacon Ltd. which was operating as 100% EOU. The appointment of official liquidator was in the following terms:-

"6. Accordingly, M/s Varun Seacon Ltd., the respondent-Company, is ordered to be wound up. The Official Liquidator attached to this Court is appointed as the Official Liquidator who shall take over the possession of the assets and books of accounts of the respondent-Company and make an inventory thereof within one month from today. The Official Liquidator shall exercise all the powers and discharge the duties under the Companies Act, 1956 and also comply with the procedural requirements prescribed by or under the Companies Act, 1956."

4.1 We also find that vide order dated 27.04.2005, the Hon'ble High Court of Gujarat dealing with the Official Liquidator report in para 5 directed as follows: -

"(5) The purchaser shall be liable to pay all statutory dues, if any, due and payable on the subject properties of the Company for the period after the date of winding-up order. The payment of such dues for pre-Liquidation period shall be settled as per the provisions of the Companies Act, 1956. However, dues, taxes, cess, if any, applicable on the sale of assets shall be paid by the purchaser."

It is clear from para-5 (supra) that the purchaser shall be liable for statutory dues on the property purchased from the company if any, after the date of the winding up order. The payment of dues for pre-liquidation period shall be settled as per the provisions of Companies Act, 1956. The only exception made was, the dues, taxes, cess if any, applicable on the sale of the assets shall be paid by the purchaser. The last one as per us comes into play when question of sales-tax will arise on sold assets.

4.2 From the reading of above directions, it transpires that only sales tax is to be paid by the purchaser and all other dues for pre-liquidation period including any excise duties or customs duties shall be considered settled as per the provisions of the Companies Act, 1956. It is thus clear that as per this order also, the recovery provisions of Customs Act, Excise etc. upto the date of liquidation will get sub-assumed and shall be dealt with under the provisions

of the Companies Act,1956. The department has not shown to this Court any non-obstante clause through which it can be considered that the Customs duties or other dues still survive when the sale of assets takes place as per Companies Act, 1956. No non-obstante clause under the relevant fiscal legislations have been brought to our notice which can prevail upon the provisions of the Companies Act,1956 and which allows department to bypass official liquidator. Further by operation of law, dues of pre-liquidation period have been considered as settled under provisions of the Companies Act, 1956 as indicated above even as per the Court's order. Therefore, we are not convinced that from assets sold through auction, any dues can be recovered from the purchaser. We are mindful that only assets have been sold and not the whole unit. We find that the reliance on the decision of M/s. Dollar Industries (Spinning Division) Vs. Assistant Commissioner, C.Ex. & Cus. ST. as reported in 2021 (375) ELT 455 (Mad.) has been correctly placed by the appellants. Para 26 of the above decision is categorical that the auction purchasers cannot be held liable for the arrears incurred by the previous licensee or industry in favour of whom the tax benefits are granted. We find that the following paras are relevant which are also based on various decisions of Supreme Court.

"26. *As discussed above, the transaction between the assesseees or licensee and authorities is personal between them. It will not continue unless and otherwise there is a specific condition attached to the same. The auction purchasers cannot be held liable for the arrears incurred by the previous licensee or industry in favour of whom the tax benefits are granted.*

27. *Section 11 of the Central Excise Act, 1944, does not create any charge over the property. In this context, it is useful to refer to the judgment of the Hon'ble Supreme Court in Rana Girders Limited v. Union of India and Others [2013 (10) SCC 746 = [2013 \(295\) E.L.T. 12](#) (S.C.)] wherein it is observed as under :*

"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 purchased the entire unit i.e. the entire business itself, that he would be 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 Central Excise Act is concerned, there was no such specific provision as noticed in SICOM as well. Proviso to Section

11 is now added by way of amendment in the Act only w.e.f. 10-9-2004. 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."

28. *The Hon'ble Supreme Court in Ahmedabad Electricity Co. Ltd. v. Gujarat Inns Pvt. Ltd. and Others [2004 (3) SCC 587] has held as under :*

"3. In our opinion, the present two cases are the cases of fresh respondents (auction purchasers) connections and they have no objection in as fresh connections given on the dates on which the supply of electricity was restored to the premises. We are clearly of the opinion that in case of a fresh connection though the premises are the same, the auction purchasers cannot be held liable to clear the arrears incurred by the previous owners in respect of power supply to the premises in the absence of there being a specific statutory provision in that regard. Though we find some merit in the submission of the learned counsel for the appellant calling for reconsideration of the wide propositions of law laid down in Isha Marbles' case (supra), we think the present one is not a case for such exercise. We leave the plea open for consideration in an appropriate case."

29. *The Hon'ble Supreme Court in Haryana State Electricity Board v. Hanuman Rice Mills, Dhanauri And Others [2010 (9) SCC 145] has observed as under :*

"12. The position therefore may be summarised thus :

(i) Electricity arrears do not constitute a charge over the property. Therefore, in general law, a transferee of a premises cannot be made liable for the dues of the previous owner/occupier.

(ii) Where the statutory rules or terms and conditions of supply which are statutory in character, authorise the supplier of electricity to demand from the purchaser of a property claiming reconnection or fresh connection of electricity, the arrears due by the previous owner/occupier in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser.

Position in this case

13. The appellant did not plead in its defence that any statutory rule or terms and conditions of supply authorised it to demand the dues of previous owner from the first respondent. Though the appellant contended in the written statement that the dues of Durga Rice Mills were transferred to the account of the first respondent, the appellant did not specify the statutory provision which enabled it to make such a claim. The decision in Paramount Polymers shows that such an enabling term was introduced in the terms and conditions of electricity supply in Haryana, only in the year 2001.

14. The appellant did not demand the alleged arrears, when the first respondent approached the appellant for electricity connection in its own name for the same premises and obtained it in the year 1991. More than three years thereafter, a demand was made by the appellant for the first time on 16-1-1995 alleging that there were electricity dues by the previous owner. In these circumstances, the claim relating to the previous owner could not be enforced against the first respondent."

4.3 We therefore find that in view of the above judgments, notice issued to the appellants demanding arrears of tax or duty foregone by the previous owner from the present appellants/ auction purchasers is without jurisdiction. We therefore hold accordingly. As the question of recovery has been settled in favour of the appellants, we do not find need to go into the other question on limitation or joint or several liability.

5. Appeals are allowed with consequential relief.

(Pronounced in the open court on 08.12.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)