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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/28 /2009 - EX[DB] Date **24/01/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi

To :
M/S EKLINGJI FINANCE PVT. LTD.
C-554, ROAD NO.6, V.K.I. AREA, JAIPUR-302013.

M/S EKLINGJI FINANCE PVT. LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/47/ 2012 EX|DB|** dated 16-1-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.
2. Adv. / Consult SH. NITIN PATHAK, ADV.,
C/O SH. JATIN MAHAJAN, ADV.,
157, 3RD FLOOR, VINOBHA PURI,
LAJPAT NAGAR-II, N. DELHI-24
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, New Delhi-3
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

E/Appeal No.28/2009

(Arising out of order in appeal No. 200/DK/CE/JPR.1/08 dated 30.9.08 passed by the Commissioner of Central Excise (Appeals), Jaipur)

Date of Hearing: 12.10.2011

M/s Eklinggji Finance Pvt Ltd — Appellants

Vs

CCE, Jaipur — Respondent

Appeared for the Appellant: Shri Nitin Pathak, Advocate
Appeared for the Respondent: Shri Jatin Mahajan, DR

Coram: **Hon'ble Mr Ashok Jindal, Member (Judicial)**
Hon'ble Mr. Mathew John, Member (Technical)

FINAL ORDER No.A/47/2012-EX (BR)

Per Mathew John:

The appellants had purchased certain fixed assets on 19.4.2001 from RIICO Ltd. The assets were previously owned by Jain Biscuits Industries Pvt Ltd, Jaipur. M/s Jain Biscuits Industries Pvt Ltd were owing revenue arrears to Central Excise Department arising from order in original No. 310/2000 dated 29.9.2000 as under:

a) Confirmed demand of Rs. 1,12,467/- under Section 11A of the Central Excise Act, 1944;
b) Penalty of Rs. 500/- per day and interest on outstanding amount upto the date of payment of outstanding amount under Rule 173GG(3) of erstwhile Central Excise Rules, 1944; and
c) Penalty of Rs. 10,000/- against M/s Jain Biscuits Industries Ltd under rule 173Q of the erstwhile Central Excise Rules, 1944.

2. The appellants deposited an amount of Rs. 1,29,967/- (Rs. 1,12,467/- duty+ penalty of Rs. 10,000/-, Rs.5,000/-, Rs.2500/-) on 20.12.07 outstanding against M/s Jain Biscuits Industries Ltd. However, they did not deposit interest of Rs. 2,78,702/- and penalty amount of Rs. 20,04,081/- as required by the Superintendent, Central Excise Range-I, Division, Jaipur vide his letter dated 23.1.2008 but filed appeal against the said order of the Superintendent with Commissioner(Appeals).

3. The Commissioner (Appeals) after considering the matter, ordered as under:-

"So far as the recovery of interest and penalty as ordered to be paid by the Superintendent vide his letter dated 23.1.08 is concerned, I find that both in terms of rule 230 of the erstwhile Central Excise Rules, 1944 and as per proviso to Section 11 of the Central Excise Act, 1944 only such duty or other sums recoverable or due from such predecessor at the time of such transfer are recoverable from the successor. Proviso to Section 11 ibid reads as under:-

Provided that where the person (hereinafter referred to as predecessor) from whom the duty or any other sums of any kind, as specified in his section, is recoverable or due, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other persons all excisable goods, materials preparations, plants machineries, 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 duty or other sums recoverable or due from such predecessor at the time of such transfer or otherwise disposal or change.

I therefore, find a force in the argument of the appellant that their liability if any, should be restricted to the dues outstanding *against the predecessor on the date of acquisition of the property by the appellant from the RIICO Ltd. I accordingly, hold that the appellant is liable to pay outstanding liability of the predecessor as on 19.4.2001 and not liable to pay such liabilities which have been accrued subsequent to the purchase of the impugned property i.e. after 19.4.2001 as per the provisions of rule 230 of the erstwhile Central Excise Rules, 1944 and proviso to Section 11 of the Central excise Act, 1944 as it is difficult to conceive that the appellant had any opportunity to participate in the adjudication proceedings and contest against the levy of interest and penalty etc as observed by the Hon'ble Supreme Court under para 8 of the judgment in the case of Macson Marbles Pvt Ltd (supra).*

In view of the above discussion, I uphold the impugned order of the Superintendent except to the extent of demanding of arrears in excess of outstanding amount against the predecessor as on 19.04.2001. In the above terms, the appeal is disposed of."

4. The appellants ~~has~~ filed this appeal to the Tribunal challenging the finding of the Commissioner (Appeals) that the amount deposited i.e. Rs. 1,29,967/- except interest was appropriately paid. Their submission is that they did not succeed in the business of M/s Jain Biscuit Industries Pvt. Ltd. They only purchased a piece of land from RIICO Ltd which land was earlier owned by M/s Jain Biscuits Industries Pvt Ltd. The appellants claim that they need not have paid such amount because there was no legal provision under which they were liable to pay such amount and claimed refund of amount deposited. The appellants are relying on the following decisions:-

1) Press Fab Precision Components Pvt Ltd Vs CCE
2006 (195) ELT 229 (Tri. Bang).

2) Mars Packaging Pvt Ltd Vs CCE Jaipur
2010 (257) ELT 463 (Tri. Del)

3) State of Karnataka & Another Vs.
Shreyas Papers Pvt Ltd & Others
AIR 2006 SC 865

5. The Revenue on the other hand, relies on the decision of Macson Marbles Pvt Ltd Vs UOI reported in 2003 (158) ELT 424 (SC).

6. We have considered arguments on both sides.

7. The fixed assets of M/s Jain Biscuits Industries Ltd were purchased by the appellant on 19.4.2001. By this time, the old Central Excise Rules, 1944 had been rescinded and new Central Excise Rules, 2001 had been notified vide Notification No. 9/2001(NT) dated 1.3.2001. We notice that the decision of Hon'ble Supreme Court in the case of Macson Marbles Pvt Ltd (supra) relied upon by Revenue, ~~is~~ was given with reference to Rule 230(2) of Central Excise Rules, 1944. Further, it was a case where department proceeded to attach plant and machinery which belonged earlier to the defaulter. Nothing is coming out from case records that any attachment of plant, machinery or excisable goods has been done in this case.

8. Provisions similar to that contained in Rule 230(2) is incorporated in the proviso to Section 11 of the Central Excise Act, 1944 with effect from 10.9.2004 by Finance (No.2) Act, 2004. Further in this provision, we take note of two aspects. Firstly the provision is applicable only if a person "succeeded in such business" of the defaulter. Secondly the provision only enables Revenue to attach "all excisable goods, materials, preparations, plant, machinery, vessels, utensils, implements and articles in the custody or possession of the

person so succeeding". This ~~reference~~ provision ~~can be~~ is only with reference to such articles which the successor in business got from the defaulter and not which the successor had in possession from his other business. There is no mention of immovable properly like land and buildings in the said provision. Further the proceedings so far do not talk about any attachment that was made with proper sanction of the Commissioner of Central Excise as required in the said provision.

9. The effect of the impugned order of the lower authority is to hold the appellants liable to pay revenue arrears of M/s Jain Biscuits Industries Pvt Ltd without examining the issue whether the appellant is a successor in business of M/s Jain Biscuits Industries Pvt Ltd and without attaching any property mentioned in the said ~~provison~~ provision. Further there is the issue that a legal provision brought into Statute ~~on~~ in 2004 cannot apply to a transaction done on 19.4.2001.

10. Thus we see merit in the contention of the appellant and the appeal is allowed.

(Order ~~dictated and~~ pronounced in the open Court.)

(ASHOK JINDAL)
Judicial Member

(MATHEW JOHN)
Technical Member

MPS*