CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Excise Appeal No. 1296 of 2012

(Arising out of Order-in-Appeal No. AKP/NSK/83/2012 dated 28.05.2012 passed by the Commissioner of Central Excise & Customs (Appeals), Nasik.)

Commissioner of Central Excise, Nashik ....Appellant
Kendriya Rajaswa Bhavan,
Gadkari Chowk, Nasik – 422 002

VERSUS

M/s. Jain Irrigation Systems Ltd. ....Respondent
Gat No. 118, 122, Natinal
Highway No. 06, Eklangna – Village,
Tal.- Dharangaon, Dist.-Jalgaon,
Pin No.- 425 001

APPERANCE:

Ms. Anuradha Parab, Assistant Commissioner, Authorised Representative for the Appellant
Ms. Padmavati Patil, Advocate for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85208 / 2022

Date of Hearing: 09.03.2022
Date of Decision: 09.03.2022

PER: DR. SUVENDU KUMAR PATI

Refusal by the Adjudicating Authority to grant registration to the Respondent on the ground that its company is operating on the premises of another company who had outstanding Central Excise dues, that has been set aside by the Commissioner (Appeals) vide his above noted order, is assailed by the Revenue-Department in this appeal.

2. We have heard submissions from both the sides.

3. Facts of the case, as can be inferred from the appeal memo and response from the opponent, is that the land over which Respondent's company has been set up was taken into possession by the Tahsildar at the instance of the Central Excise & Customs Department for recovery of outstanding dues of the Appellant-Department to the tune of Rs.28,60,00,000/- against its previous owner, for which registration was denied to the Respondent who purchased the same factory and building situated in the previously owned land of M/s Maniyar Plast Ltd. through the process of official liquidation invoked under SARFAESI Act, 2002.

4. During the course of argument, learned Authorised Representative for the Appellant-Department submitted that the tender document at para 2.7 clearly indicated that outstanding dues are the responsibility of purchaser who shall meet the same over and above the purchased consideration amount and as Rule 9 of the Central Excise Rules, 2002 clearly indicates that two registration certificates cannot be issued for one and the same premises and since the same premises had already been registration with M/s Maniyar Plast Ltd. and has not yet been cancelled/revoked in the absence of any such request for cancellation or revocation, it cannot be registered in the Respondent's name, for which order passed by the learned Commissioner (Appeals) is required to be set aside.

5. In response to such submissions, learned Counsel for the Respondent Ms. Padmavati Patil submitted that the Respondent had purchased the assets from official liquidator of the previous company namely M/s Maniyar Plast Ltd. and based on the direction of the Hon'ble Bombay High Court only arrears of land related revenue were to be borne by the Purchaser–Respondent and therefore outstanding amount of the previous owner cannot be realised from the Respondent. In submitting case laws of the Hon'ble Supreme Court decided on 24.02.2022 in the case of Punjab *National Bank (2022 SCC OnLine SC 227)*, she also argued that government dues would not have priority over secured creditors i.e. bank and in the instant case it is at the instance of bank under SARFAESI Act 2002, official liquidator effected the liquidation process basing on the direction of the Hon'ble Bombay High Court and the same activity under liquidation process cannot be equated with "sale of business" to invoked proviso to Section 11, for which dues cannot be recovered from the purchaser and therefore interference by the CESTAT in the order passed by the Commissioner (Appeals) is uncalled for.

6. Perused the case record. It is observed that several documents including request for release of BOZA to the Tahasildar made by the Superintendent of Central Excise & Customs on 02.06.2015 and official liquidator letter dated 10.03.2020 photo copies are produced by the Respondent to substantiate that only

arrears of land related revenue were to be borne by the Respondent-Purchaser, for which no other dues can be recovered from the Purchaser. These are the documents procured subsequent to filing of the appeal in CESTAT but the dispute is unrelated to the recovery of old dues. Here what is required to be determined is whether appellant was eligible to get registration of its factory and premises after liquidation process had been completed against the previous title holder of the property?

7. First and foremost point to be considered is that whether Rule 9 prohibits issue of two registration certificates for one and the same premises that formed the basis of the adjudication order? On a bare reading of Rule 9 no such prohibition is apparent. Moreover, a company that had under gone a process of liquidation is deemed to be non-existent for which waiting for a request from the said company to deregister it is irrelevant and is not dependent on subsequent registration of any company functioning from the said premises, existence of which remained undisputed in view of its acquirement of right, title and interest over the property through an official liquidation apparently in an auction process that was done in compliance to the order passed by the Hon'ble Bombay High Court and in view of the fact that carrying out business over the said property including filing of its return before all competent authorities bear testimony to the fact that appellant is the rightful owner of the

said property, it is entitled to get a registration for its business activities carried out from the premises in question. Hence the order.

ORDER

8. The appeal is dismissed and the order passed by the Commissioner of Central Excise & Customs (Appeals), Nasik vide Order-in-Appeal No. AKP/NSK/83/2012 dated 28.05.2012 is hereby confirmed.

(Pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

Prasad