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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5739 OF 2007
(Arising out of S.L.P.(C) No.4266/2007)

M/s. Shree Sidhbali Sugar Ltd.

...Appellant

Versus

Dy.Commr., Central Excise, Dehradun & Ors.

...Respondents

ORDER

Leave granted.

M/s. Devki Steel (P) Ltd. was a borrower of the State Financial Corporation (SFC). It was also an alleged defaulter in payment of excise duty under the Central Excise, Act, 1944. The properties were auctioned by the SFC. In the auction, the properties were purchased by M/s. Prahlad Steel (P) Ltd., respondent No.5, who in turn alienated the property to the present appellant. Further, the SFC also granted lease in favour of the appellant.

The short question involved before the High Court was whether the Excise Department was entitled to proceed against the property purchased by the present appellant as stated above in respect of non-payment of excise duty by M/s. Devki Steels (P) Ltd. At this stage, it may be clarified that the appellant purchased only land and building and not the plant and machinery.

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Before the High Court, an important question of interpretation of Section 11 read with the proviso of the Central Excise Act arose for determination. Interpretation of Rule 230 also arose for determination before the High Court. None of these questions were decided by the High Court. It dismissed the writ petition only on the ground that the appellant herein was not the owner as the sale deed was not filed.

In our view, question of ownership was not in dispute. The pure question of law basically is whether the Department was entitled to proceed against the land and building purchased by the present

appellant from the auction purchaser-M/s. Prahlad Steels (P) Ltd. in respect of the dues of M/s. Devki Steel (P) Ltd. One of the points which may also arise for determination is whether excise duty would be a charge on the property. That question, of course, was not raised before the High Court. However, we grant liberty to the Department to raise the said question also before the High Court subject to the Department making proper averments in that regard.

For the afore-stated reasons, the impugned judgment of the High Court is set aside. We remit the matter back to the High Court by restoring Writ Petition No.434/2005 on the file of the High Court for its disposal on merits. Since

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the matter is regarding the demand under the Excise Act, we expedite the hearing of the writ petition. We request the High Court to decide the writ petition preferably within six months from today. Parties to complete their pleadings within four weeks from today. In the meantime, the Department will not take any coercive action to recover the dues from the present appellant till the hearing and disposal of the writ petition by the High Court in accordance with law.

Civil Appeal is disposed of accordingly.

.....J.
(S.H. KAPADIA)

.....J.
(B. SUDERSHAN REDDY)

New Delhi,
December 07, 2007.
ITEM NO.32

COURT NO.8

SECTION III

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).4266/2007

(From the judgement and order dated 18/12/2006 in WP No.434/2005 of the HIGH COURT OF UTTARANCHAL AT NAINITAL)

M/S SHREE SIDHBALI SUGAR LTD.

Petitioner(s)

VERSUS

DY.COMMR.,CENTRAL EXCISE,DEHARADUN & ORS

Respondent(s)

(With appln(s) for exemption from filing O.T. of annexures and permission to file rejoinder affidavit and prayer for interim relief)

Date: 07/12/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Petitioner(s) Mr. Rakesh Dwivedi, Sr.Adv.
 Mr. Sudhir Kumar Gupta,Adv.
 Mr. Anurag Pandey, Adv.
 Mr. Mihhir Kr. Chaudary, Adv.

For Respondent(s) Mr. R. Santhanam, Adv.
 Mr. Shiv Prakash Pandey,Adv.

 Mr. G.E. Vahanvati, S.G.
 Mr. S.D. Sharma, Adv.
 Mr. Sparsh Bhargava, Adv.
Mr. B. Krishna Prasad, Adv.

UPON hearing counsel the Court made the following
ORDER

Leave granted.

Civil Appeal is disposed of in terms of the signed order.

(N. Annapurna)
Court Master

(Madhu Saxena)
Court Master

(Signed order is placed on the file)