

z>

C.A.No. 4463 OF 1997

ITEM NO.101

COURT No.2

SECTION III

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 4463/1997

M/s Macson Marbles Pvt. Ltd.

Appellant(s)

Versus

U O I & Ors.

Respondent(s)

(with office report)

DATE : 11/11/2003

This/These matter/matters was/were
called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU

HON'BLE MR. JUSTICE G.P. MATHUR

For Appellant(s) Ms. Radha Rangaswamy, Adv.

Ms. Ranjeeta Rohatgi, Adv.

For Respondent(s) Mr. A.K. Ganguli, Sr. Adv.

Mr. Rajiv Nanda, Adv.

Mr. B.K. prasad, Adv.

Mr. Sushil Kumar Jain, adv.

Mr. K.K. Gupta, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is disposed of in terms of the signed order.

[Charanjeet Kaur]

Court Master

[Promila Nagpal]

Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4463 OF 1997

M/s Macson Marbles Pvt. Ltd.

....

Appellant (s) Pe

Versus

UOI & Ors.

....

Respondent (s)

O R D E R

An Industrial unit run by M/s Diamond Marbles Pvt. Ltd.- respondent No. 4 was brought to sale in terms of Section 29 of the State Financial Corporation Act, 1951 (for short, the State Act) by Rajasthan Financial Corporation- respondent No. 3. Appellant before us participated in auction and its bid having been accepted took possession of the said unit on 28.8.1987 pursuant to the agreement entered into between them. On 4.12.1987, the Additional Collector of Central Excise adjudicated in a proceeding arising out of show cause notice issued under Section 11-A of the Central Excise Act to respondent No. 4 in relation to certain goods that are said to have been removed between 13.8.1986 and 23.8.1986 and excise duty of Rs. 1,04,586.17 and penalty of Rs. 3 lakhs was levied and demanded. A letter was sent by the Central Excise Department to the appellant demanding a sum of Rs. 4,07,291.75 pursuant to the adjudication order made

against respondent No. 4. The appellant in his letter to the Department contended that it had no liability to pay the excise dues of respondent No. 4. The Department not having acceded to it, a writ petition was filed in the High Court challenging the recovery proceedings initiated by the Department. However, the said amount was paid. In the writ petition several contentions were raised, including the question that the liability is only that of respondent No. 4 and not of the appellant ; that appellant having taken over the unit from the third respondent, had no liability to pay the excise dues; that Rule 230 (2) of the Central Excise Rules, 1944 has no application to the present case. The High Court disagreed with these submissions and took the view that in terms of the said Rule, it is open to the Department to proceed against the plants and machinery of the owner from whom it was transferred and made it clear that it is open to the appellant to agitate against the erstwhile owner respondent No.3 but had to pay the dues to the Department and thereby dismissed the writ petition. Hence this appeal by special leave.

In this appeal, Ms. Radha Rangaswamy, learned counsel for the appellant very strenuously contended that in view of Section 46-B of the State Act it would prevail over the Central Excise Act and relied upon the decision of this Court in Sitani Textiles & Fabrics (P) Ltd. vs. Asst t.C. of Cus. & C.E., Hyderabad - 1999 (106) ELT 296. She submitted that as the State Act is a

special enactment and Central Excise Act is a general enactment, the State Act would prevail over the same. It is brought to our notice that this aspect is under consideration in another matter before this Court. It is also submitted that as held in N.B. Sanjana, Assistant collector of Central Excise, Bombay and Ors. Vs. The Elphinstone Spinning and Weaving Mills Co. Ltd.-1978 ELT (J 399) the penalty was not attracted in the present case at all. She also relied upon the decision of this Court in Isha Marbles vs. Bihar State Electricity Board and Anr.- (1995) 2 SCC 648 to contend that in case of sales effected under Section 29 (1) of the State Act, the recovery of dues of previous owner from the auction purchaser could not be made.

Now taking the last contention first we may notice that this Court in Isha Marbles considered the scope of Section 24 of the Electricity Act and held that there is no charge over the property in question and when a premises comes to be owned or purchased by the auction purchaser, he cannot be called upon to clear the past arrears when such purchaser seeks supply of electric energy or it is made clear in that decision that what matters is the contract entered into by the erstwhile consumer with the Board and the Board cannot seek the enforcement of contractual liability against the third party. Therefore, this decision in Isha Marbles cannot be taken advantage of by the appellant at all in this case.

In this case the liability arises under the Central Excise Act and Rule 230(2) of the Central Excise Rules. The said Rule clearly indicates that it is a mode of recovery of the excise dues from the assets owned by a predecessor and on his liabilities being assessed could be recovered even from the successor.

The argument advanced by the appellant that sale having taken place under the State Act free of encumbrances and the transferor's rights or liabilities cannot be that of transferee does not hold good. Section 29 (2) of the State Act makes it clear that the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation can be brought to sale and such a sale if resulted in transfer of property shall vest in the successor all rights in the property transferred as if the transfer has been made by the owner of the property. When sale made by the corporation is deemed to be a sale made by the owner of the property, necessarily Rule 230 (2) of the Central Excise Rules would be attracted.

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. The Department having initiated the proceedings under Section 11 A of this Act adjudicated liability of respondent No. 4 and held that respondent No 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 undisturbed. The appeal is disposed of accordingly.

.....J[S. RAJENDRA BABU]

.....J [G.P. MATHUR]

NEW DELHI,
NOVEMBER 11, 2003.