

**IN THE HIGH COURT FOR THE STATE OF TELANGANA,  
HYDERABAD**

\* \* \*

**WRIT PETITION No.9110 OF 2009**

Between:

M/s. Jasday Pharmaceuticals.

Petitioner

VERSUS

The Superintendent of Central Excise and others.

Respondents

**ORDER PRONOUNCED ON : 30.01.2024**

**THE HONOURABLE SRI JUSTICE P.SAM KOSHY  
AND  
THE HONOURABLE SRI JUSTICE N.TUKARAMJI**

1. Whether Reporters of Local newspapers  
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be  
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to  
see the fair copy of the Judgment? : **Yes**

---

**P.SAM KOSHY, J**

**\*THE HONOURABLE SRI JUSTICE P.SAM KOSHY**

**AND**

**THE HONOURABLE SRI JUSTICE N.TUKARAMJI**

**+ WRIT PETITION No.9110 OF 2009**

**ORDER:** (*per Hon'ble Sri Justice P.SAM KOSHY*)

%Dated 30.01.2024

# Between:

M/s. Jasday Pharmaceuticals.

Petitioner

**VERSUS**

The Superintendent of Central Excise and others.

Respondents

! Counsel for Petitioner : Mr.Srinivasa Rao Bodduluri

^ Counsel for Respondents : Mr.A.Ramakrishna Reddy for R-1.  
Mr.M.Hamsa Raj for R-2 and 3.

< GIST :

> HEAD NOTE :

? Cases referred :

<sup>1</sup> (2013) 10 SCC 746

**THE HON'BLE SRI JUSTICE P.SAM KOSHY  
AND  
THE HON'BLE SRI JUSTICE N.TUKARAMJI  
WRIT PETITION No.9110 OF 2009**

**ORDER:** *(per Hon'ble Sri Justice P.SAM KOSHY)*

None for the petitioner. Heard Sri A. Ramakrishna Reddy, learned Standing Counsel for CEBC, appearing for respondent No.1 and Sri M.Hamsa Raj, learned counsel appearing for respondent Nos.2 and 3.

2. Instant writ petition is of the year, 2009 where the challenge is to the demand notices, dated 26.08.2004, 18.03.2008, 26.03.2008 and 22.01.2009, issued by respondent No.1. *Vide* the said notices, respondent No.1 has threatened to seize the property of the petitioner as there are certain amounts due payable by M/s.Vita Biotics Private Limited, whose property the petitioner has purchased in auction conducted by respondent Nos.2 and 3.

3. The facts in brief are that one M/s.Vita Biotics Private Limited has taken some loan from respondent Nos.2 and 3 along with certain financial assistance together from

respondent Nos.2, 3 and the Syndicate Bank on *pari passu* basis. Thereafter, M/s.Vita Biotics established a plant on Plot No.10 and 11, Road No.9, IDA, Nacharam, Ranga Reddy Distrcit. The said M/s.Vita Biotics defaulted in repayment of the loan that had owed to respondent Nos.2, 3 and the Syndicate Bank. Because of the default, respondent Nos.2 and 3 subsequently took over the plant machinery and the property belonging to M/s.Vita Biotics Private Limited and put the same for auction. The petitioner herein was the highest bidder in the auction and he became the auction purchaser. The auction purchase was finalized and sale certificate was executed in favour of the petitioner and a sale deed was also executed in due course of time. Meanwhile, there were recovery proceedings pending against M/s.Vita Biotics Private Limited. Since the petitioner took over the plant machinery and the premises belonging to M/s.Vita Biotics Private Limited, having purchased the same in auction, respondent No.1 thereafter started issuing notice after notice to the petitioner for clearance of the dues which M/s.Vita Biotics Private Limited owes to the Central Excise Department. It

is these notices which are under challenge in the present writ petition.

4. Today, when the matter is taken up for hearing, it has been brought to the notice of this Court that there has been a series of similar notices issued by the Central Excise Department which were challenged by way of several writ petitions which stood disposed of by this Court in favour of the auction purchaser. A few writ petitions disposed of and decided by this Court in this regard are; W.P.No.3428 of 2007 and Batch, decided on 15.11.2022 and W.P.No.24261 of 2005 decided on 27.12.2023.

5. All the aforesaid writ petitions were decided and stood allowed in view of the law being settled by the Hon'ble Supreme Court on the issue raised in the present writ petition in the case of **Rana Girders Ltd. Vs. Union of India**<sup>1</sup>. The Hon'ble Supreme Court in the said judgment has specifically held that the subsequent transferee or the auction purchaser of the secured property would not be

---

<sup>1</sup> (2013) 10 SCC 746

liable for demand of outstanding amount which was due by the defaulter. For ready reference, the relevant portion of the said judgment is reproduced hereunder:-

“20. Coming to the liability of the successor in interest, the Court clarified the legal position enunciated in M/s. Macson by observing that such a liability can be fastened on that person who had purchased the entire unit as an ongoing concern and not a person who had purchased land and building or the machinery of the erstwhile concern. This distinction is brought out and explained in paragraph 24 and 25 and it would be useful for us to reproduce herein below: (SICOM Ltd. case, SCC pp.131-32, para 19)

“19. Reliance has also been placed by Ms.Rao on Macson Marbles Pvt.Ltd. (supra) wherein the dues under Central Excise Act was held to be recoverable from an auction purchaser, stating: (SCC pp.483-84, paras 10-11)

‘10. 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.’

11. The Department having initiated the proceedings under Section 11A 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 undisputed. The appeal is disposed of accordingly.” The decision, therefore, was rendered in the facts of that case. The issue with which we are directly concerned did not arise for consideration therein. The Court also did not notice the binding precedent of Dena Bank as also other decisions referred to hereinbefore.’

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 in so far as present case is concerned. Accordingly, we thus, hold that in so far 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.

22. With this, we now revert to the first issue, namely interpretation of the clause in the Sale Deed for land and building and similar clause in Agreement of Sale for machinery on the basis of which appellant is held to be liable to pay the dues. These clauses have already been incorporated in the earlier portion of our judgment.

23. We may notice that in the first instance it was mentioned not only in the public notice but there is a specific clause inserted in the Sale Deed/Agreement as well, to the effect that the properties in question are being sold free from all encumbrances. At the same time, there is also a stipulation that “all these statutory liabilities arising out of the land shall be borne by purchaser in the sale deed” and “all these statutory liabilities arising out of the said properties shall be borne by the vendee and vendor shall not be held responsible in the Agreement of Sale.” As per the High Court, these statutory liabilities would include excise dues. We find that the High Court has missed the true intent and purport of this clause. The expressions in the Sale Deed as well as in the Agreement for purchase of plant and machinery talks of statutory liabilities “arising out of the land” or statutory liabilities “arising out of the said properties” (i.e. the machinery). Thus, it is only that statutory liability which arises out of the land and building or out of plant and machinery which is to be discharged by the purchaser. Excise dues are not the statutory liabilities which arise out of the land and building or the plant and machinery. Statutory liabilities arising out of the land and building could be in the form of the property tax or other types of cess relating to property etc. Likewise, statutory liability arising out of the plant and machinery could be the sales tax etc. payable on the said machinery. As far as dues of the Central Excise are concerned, they were not related to the said plant and machinery or the land and building and thus did not arise out of those properties. Dues of the Excise Department became payable on the manufacturing of excisable items by the erstwhile owner, therefore, these statutory dues are in respect of those items produced and not the plant and machinery which was used for the purposes of manufacture. This fine distinction is not taken note at all by the High Court.

24. We thus conclude that the judgment of the High Court is unsustainable in law. Accordingly, the appeal is allowed and the impugned judgment of the High Court is set aside. As a consequence the notice



of the Excise Department calling upon the appellant to pay the dues of the erstwhile owner of the unit in question also stands quashed. The appellant shall also be entitled to cost of this appeal.”

6. In view of the aforesaid legal position as it stands and also the series of writ petitions allowed by this Court of similar nature, we are also inclined to allow the present writ petition as well on similar terms.

7. Accordingly, the present writ petition stands allowed, the impugned notices, dated 26.08.2004, 18.03.2008, 26.03.2008 and 22.01.2009 are set-aside/quashed holding them to be unsustainable. In the categorical decision rendered by the Hon'ble Supreme Court in the **Rana Girders Ltd.'s** case (supra 1), it appears that even if any amount that has been paid by the petitioner under duress or any threat of seizure of property by the Central Excise Department also cannot be sustained. The petitioner would be at liberty to take appropriate recourse for claiming the said amount, if any paid under duress or any sort of threat. So far as the outstanding amount payable to the Central Excise Department by M/s.Vita Biotics Private Limited is concerned, the Department would be at liberty to

take appropriate steps for recovery of the same from M/s.Vita Biotics Private Limited. There shall be no order as to costs.

8. As a sequel, miscellaneous applications pending if any in this Writ Petition, shall stand closed.

---

**P.SAM KOSHY, J**

---

**N.TUKARAMJI, J**

**January 30, 2024.**

*BMS*