JR Metal Chennai Ltd. v. The Assistant Commissioner of Central Tax and Two Others

An order under Section 85 fastening successor liability on the buyer of plant, machinery, land and building, on a finding that this amounted to a transfer of the seller's business. At issue: whether that finding was open to writ scrutiny as made without

Date of Order: May 8, 2024
Case Law No: GIB-APHC-2024-18
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background.

The petitioner had purchased plant and machinery, land and building of M/s Venkatasai Ispat Industries Pvt. Ltd. under a sale deed dated 17.02.2021. An order dated 16.04.2024 of the Assistant Commissioner, CGST, Anantapur Division held that this amounted to a transfer of ownership of business within the meaning of Section 85 of the CGST Act, and fastened joint and several liability on the petitioner for the transferor's dues. The petitioner did not dispute the existence of a statutory remedy of appeal, but contended that the writ was maintainable because the finding of transfer of business was without jurisdiction, since only assets, and not the business, had been purchased.

Observations of the Court.

The Court set out Section 85(1) of the CGST Act, under which a taxable person who transfers his business, in whole or in part, by sale, gift, lease, leave and licence, hire or in any other manner, and the transferee to whom it is transferred, are jointly and severally liable for the transferor's tax, interest and penalty up to the time of transfer. It noted that the sub-section uses the expression "transfers his business".

Relying on State of Karnataka v. Shreyas Papers (P) Ltd., (2006) 1 SCC 615, on Krishna Lifestyle Technologies Ltd. v. Union of India, 2008 SCC Online Bom 137, and on Sri Jayajothi & Co. Ltd. v. Commissioner of Central Excise, 2010 SCC OnLine Mad 6002, the Court accepted the proposition that transfer of the "ownership of business" requires the business to be sold as a going concern, that transfer of one or more assets does not by itself amount to transfer of the ownership of business — a wider concept than ownership of discrete assets — and that liability attaches only where the transferee succeeds to the business as its successor-in-interest.

The Court held that there was no dispute on that proposition of law, but that whether there was in fact a transfer of business was a question of fact requiring determination on evidence, and that this was not a ground that could not be taken before the appellate authority; the impugned order's finding that there was a transfer of business could well be examined by that authority.

It further held that it was not convinced the impugned order was without jurisdiction, since the order was not on its face without jurisdiction and it was not the petitioner's case that the authority inherently lacked jurisdiction to decide the question; in the exercise of writ jurisdiction, the Court did not consider it appropriate at that stage to enter into the disputed question of fact.

Final verdict.

The writ petition was dismissed solely on the ground of the availability of the statutory alternative remedy of appeal, leaving it open to the petitioner to avail that remedy if so advised. No order was made as to costs, and pending interlocutory applications, if any, were closed.