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**RAJASTHAN FINANCIAL CORPORATION**  
**Udyog Bhawan, Tilak Marg, C-Scheme, Jaipur-302 005**

Ref.No.RFC/F.Law-3/LPM(22)/157 Dated: 25. Jan., 2006

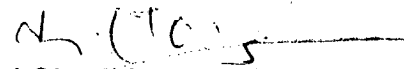
**CIRCULAR**  
(Lit. Cir No. 129.)

**Sub: Important decision of Hon'ble Division Bench of High Court, Jodhpur in the matter of M/s. Rishab Deo Tax Print Vs. Chairman, RFC & Ors.**

The Hon'ble D.B. of High Court, Jodhpur in the case of M/s. Rishab Deo Tax Print Vs. Chairman, RFC & Ors (Writ Petition No. 325/2005) has allowed the Writ Petition vide Judgement dated 24.11.05 and quashed the demand raised by the Central Excise Department on the ground that Central Excise Department was not authorized to recover the dues of the petitioner unit in wake of fact that when the petitioner had purchased the land and building of the earlier unit namely M/s. J.M.S.P. Ltd., there was no statutory charge of Central Excise Department. Copy of judgement is enclosed. The operative part of the Judgement are given below:-

“Therefore, position becomes clear that between Ist of July 2001 to Ist of April 2004 there was no provision akin to Rule 230 or proviso to Section 11 of the Act on the Statute Book. Hence, as on the date of transfer of the assets took place in May 2003, no corresponding liability followed the transfer of assets in the hands of buyer to clear the dues of previous owner which had not been paid under the Central Excise Act and the provisions of S.F.C. Act took full effect whenever such assets have vested in buyer free from all encumbrance.”

All concerned are advised to make a note of it and ensure that this judgement is brought to the notice of our Advocates for taking of use in the cases being contesting by the Corporation or against the Corporation, considering the facts and merit of the particular case in which it can be applied.

  
(Karni Singh Rathore)  
Chairman and Managing Director

Encl: a/a

Copy to:

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**Dinesh Mehta, Advocate**

B.Com(Hons), A.C.A.,LL.B.  
Rajasthan High Court, Jodhpur.

120 601  
182, Sayar Sadan  
Opp. Balniketan School  
Ratanada, Jodhpur. (Raj)  
☎ 2511541, 2511542 Fax: 2510541

Date: 6/1/2006

The Dy. Manager (Law)  
Rajasthan Financial Corporation  
Jodhpur.

Subject:- D.B. Civil Writ Petition No. 325/2005.  
Rishabh Deo Tex Print V/s Chairman,  
RFC & others.

Dear Sir,

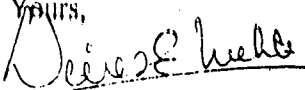
In the aforesaid Writ Petition, the Corporation has engaged me to appear on behalf of the corporation. The aforesaid case was listed for hearing before a Division Bench of Hon'ble Rajasthan High Court on 24/11/2005.

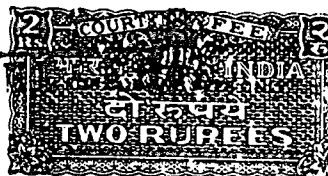
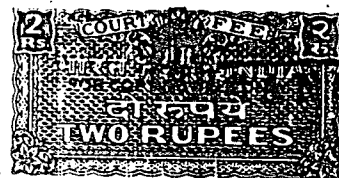
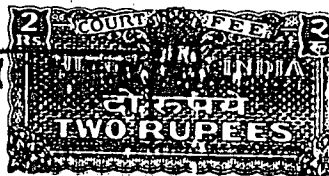
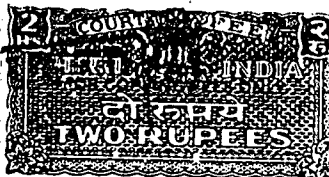
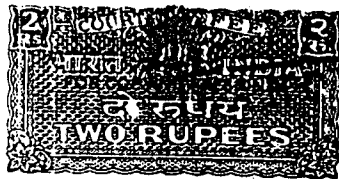
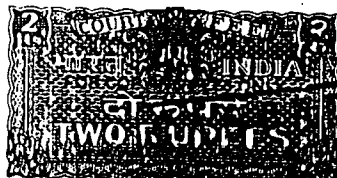
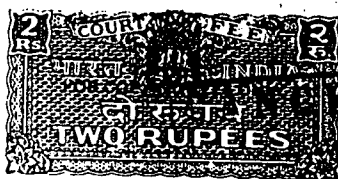
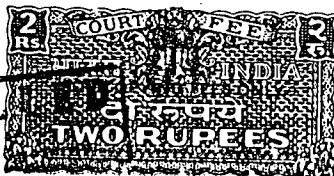
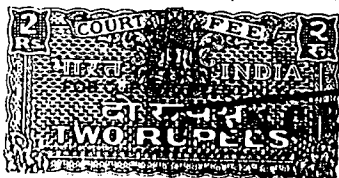
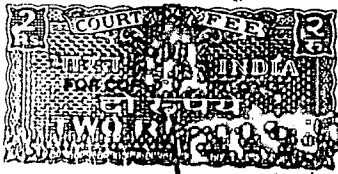
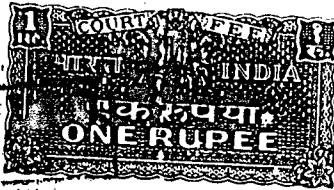
The Hon'ble High Court has been pleased to allow the Writ Petition, filed by the unit and held that the Central Excise Department was not authorized to recover dues of the Petitioner Unit in wake of the fact that when the Petitioner had purchased the land & building of the earlier unit, namely J.M.S.P. Limited, there was no statutory charge of Central Excise Department.

A certified copy of the Order dated 24/11/2005, passed by Hon'ble High Court is being sent herewith for your perusal.

A perusal of the Order and particularly Page No. 13 & 14, that Hon'ble High Court has clearly held that Rule 230(2) and Section 11 operate in case where there is a transfer of business as a whole or in part. But it does not contemplate piecemeal transfer of assets divorced from the transfer of trade or business.

I think that the findings/observations given by Hon'ble High Court in this case may be helpful of the Corporation in other cases, where the Central Excise Department proceeds to recover their dues from the subsequent purchaser of assets.

Yours,  
  
(DINESH MEHTA)  
ADVOCATE



प्रथम प्रतिलिपि प्रमाणपत्र  
 संख्या 2202 का प्रमाण  
 दिनांक 25/11/05  
 प्रवीक्षक  
 प्रतिलिपि विभाग  
 राजस्थान उच्च न्यायालय, जोधपुर

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Certified copy of Judgment dt - 24/11/05

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT  
JODHPUR

SB CIVIL WRIT PETITION NO. 325/2005

- 1 RISHABDEO TEX-PRINT PVT. LTD. A LIMITED COMPANY HAVING ITS REGISTERED OFFICE AT F-182/183, MANDIA ROAD, IND. AREA, PALI-MARWAR THROUGH ITS DIRECTOR SHRI BASANT JAIN, PALI. Distt: pali
- 2 BASANT JAIN S/O SHRI PARAS MAL JAIN R/O 13, DENDO KA BAS, PALI. Distt: pali

.....Petitioner

VERSUS

1. THE CHAIRMAN, RAJASTHAN FINANCIAL CORPORATION, UDYOG BHAWAN, TILAK MARG, JAIPUR.
2. THE MANAGER (BRANCH), RAJASTHAN FINANCIAL CORPORATION, MANDIA ROAD, IND. AREA, PALI, MARWAR. Distt: pali
3. UNION OF INDIA THROUGH THE SECRETARY, MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, GOVERNMENT OF INDIA, NEW DELHI.
4. THE DEPUTY COMMISSIONER, CENTRAL EXCISE DIVISION, C-1/A, PANCHWATI COLONY, RATANADA, JODHPUR.
5. THE COMMISSIONER, CENTRAL EXCISE, CENTRAL REVENUE BUILDING, STATUE CIRCLE, JAIPUR.

.....Respondents

WRIT PETITION UNDER ARTICLES 226 & 227 OF THE  
CONSTITUTION OF INDIA

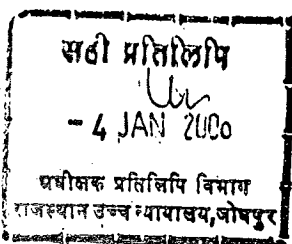
IN THE MATTER OF  
ARTICLE 14 & 19 OF THE CONSTITUTION OF INDIA

AND

IN THE MATTER OF  
RULES AND REGULATION OF RAJASTHAN FINANCIAL CORPORATION

AND

IN THE MATTER OF  
CENTRAL EXCISE ACT 1944



IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

**JUDGMENT**

RISHABDEO TEX PRINT PVT. LTD AND ANOTHER  
VERSUS  
CHAIRMAN, RAJASTHAN FINANCIAL CORPORATION  
AND OTHERS.  
D.B.CIVIL WRIT PETITION NO.325/05



Date of Judgment :-

24.11.2005

Reportable

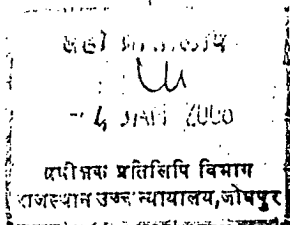
PRESENT

**HON'BLE MR.JUSTICE RAJESH BALIA**  
**HON'BLE MR.JUSTICE R. P. VYAS**

Mr.Arun Bhansali , for the appellants.  
Mr.V.K.Mathur, for Respondents.  
Mr.Dinesh Mehta , for Respondent RFC.

**BY THE COURT (PER HON'BLE BALIA, J):**

This writ petition is filed by the purchaser of the assets of certain Industrial Unit M/s. J.M.Spin Tex Print Pvt. Ltd., situated in Mandia Road, Industrial Area, Pali, at auction held by Rajasthan Financial Corporation, in exercise of its powers conferred under



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section 29 of the State Financial Corporation Act, 1951. Transfer of the assets of unit M/s. J.M.S.P. Limited , was as a result of it being defaulter in payment of principal and interest of the loan borrowed from the Rajasthan Financial Corporation (hereinafter in short RFC). The auction took place in pursuance of advertisement issued on 3.5.2003 and the highest bid made by the petitioner was accepted by the respondent corporation on 28<sup>th</sup> of June 2003.

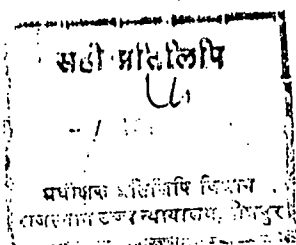
The conveyance deed was executed on 21-8.2003 and registered on 25<sup>th</sup> of August 2003. The transfer was made subject to clearance of the liabilities payable to the RIICO which were under taken by the buyer. But no other liabilities of previous owner were disclosed or under taken by the petitioner buyer.

It is further averred by the petitioner that it came to know about dues of predecessor owner were of Central Excise Department and that out-standing amount due to non payment of excise duty of

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Rs.16,73,410/- when demand / recovery notices dated 8.6.2004 and 24.6.2004 were issued to the petitioner as buyer of the unit, previously owned by M/s. J.M.S.P. Ltd. It was contended by the petitioner before the Excise Department that it being the purchaser from the RFC under section 29 of the Act and, so all assets acquired thereunder vested in him free from all encumbrances and it is not liable for payment of its predecessor's interest. However, same was not responded to and again demand notices were issued on 3.7.04, 30<sup>th</sup> September 2004 and 1.10.2004, which were duly replied by the petitioner.

After serving of the notice for demand of justice to respondents and for staying recovery proceedings against it, which was refused by the respondents by the letter dated 1.10.04, this petition has been preferred seeking mandamus that the proceedings of recovery undertaken by the



respondents vide notice dated 1.10.2004 be declared illegal and be quashed and the respondents be restrained from taking proceedings for attachment of property purchased by the petitioner in the auction pursuant to advertisement dated 3.5.2003. It was further prayed that other demand notices be also quashed.



In this connection the petitioner's contention is that when the petitioner acquired the assets of M/s J.M.S.P. Ltd in an auction conducted by RFC under Section 29 of the S.F.C. Act, 1951 no provision which could made the buyer of under-taking or assets sold liable for the dues against previous owner.

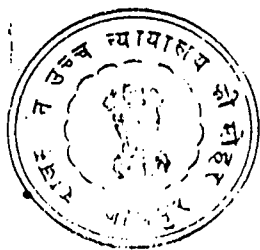
The respondent, Union of India, has placed reliance on proviso to Section 11-A of the Central Excise Act, 1944 to sustain demand made by it against successor in interest of the assets of unit, earlier known as JMS Pvt. Limited and contended that in

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view of the aforesaid statutory provision where the person (hereinafter called predecessor) from whom the duty or any other sums of any kind, as specified in section 11-A, is recoverable or due, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all excisable goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the custody or possession of the person so succeeding may also be attached and sold by such officer empowered by the Central Board of Excise and Customs, for the purpose of recovering such duty or other sums recoverable or due from such predecessor at the time of such transfer or otherwise disposal or change.



Learned counsel for Union of India also rely on sub rule (2) of Rule 230 of the Central Excise Rules,

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unless transfer is specifically under stipulation to that effect. He also pointed out as on the date of transfer took place, neither Rule 230 (2) of the Central Excise Rules 1940 in force nor proviso to Rule 11, relied on the respondents came in force. Therefore, transfer which took place for the assets of previous owner was not subject to any statutory provision under which assets of the previous owner could be pursued for recoveries under Central Excise Act, 1944, in the hands of buyer.

Learned counsel for Union of India too has placed reliance on another decision of the Hon'ble Supreme Court in case of Macson Marbles Pvt.Ltd vs. Union of India 2003(158) E.L.T.424(S.C.), in support of its submission that such recourse to recover dues of previous owner against the buyer is permissible under Rules 230(2) of the Central Excise Rules. The said rules clearly indicates that it is a mode of recovery of the excise dues from the assets owned by a predecessor

Dr

સર્કલ અધિકારી  
 - 4 JAN 2003  
 અધિકારી સહાયક વિભાગ  
 રાજસ્થાન સરકારના મુદત, જોધપુર

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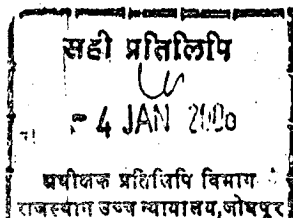
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and on his liabilities being assessed could be recovered even from the successor.

The facts noticed by us above are not in dispute. At this juncture another important fact that need be noticed is the subject matter of transfer, which had been advertised for sale in respect of JMSP Limited. The advertisement reveals that only land, building and plant were offered for sale. It was sale of assets. Sale or transfer of business as a whole or in part which was being operated by its erstwhile owner of the unit was not the subject matter of transfer. Under clause (3) of the advertisement, the institution dues to RIICO were to be borne by the buyer. It was specifically stipulated that dues of other State department e.g. PHED, RSEB, Sales Tax, Land and Building Tax, State Industries Department shall not be taken by the buyer. Thus, under the stipulated terms of the auction the existing liabilities of unit had not been transferred to the buyer except to the extent dues out standing against RIICO.



First deck must be clear about the relevant provision of law as they existed on the date of transfer which took place in May 2003.



The Central Excise Rules, 1944, contained Rule 230 (1) which provided firstly detention of plant, machinery, vessels, utensils, implements and articles for making or manufacturing or producing any such goods, or, preparing any materials, or by which the trade or business is carried on, in the custody or possession of the person carrying on such trade or business, or in the custody or possession of any agent or other person in trust for or for the use of person carrying on such trade or business, may be detained for the purpose of exacting such duty, and any officer duly authorised by general or special order of the Central Board of Excise and Customs or the Commissioner may detain such goods, materials, preparations, plant, machinery, vessels, utensils and articles until such duties or any sums recoverable in

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lieu thereof are paid or recovered.

This provision obviously applicable to a person against whom dues are outstanding and envisage only determination of specified assets until dues are paid by the person carrying on such trade or business and against whom liability for dues has arisen.

Sub Rule (2) of Rule 230 provided pursuits of goods and articles mentioned in sub rule (1) of the Rule 230 in the hands of the successors in business in whole or part in respect of the dues out-standing against the previous owner.

However, the Rules of 1944 stood superceded when the Excise Rules 2001 were promulgated vide notification dated 1<sup>st</sup> of March 2001 which were to be brought in effect from 1<sup>st</sup> July 2001.



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predecessor) from whom the duty or any other sums of any kind, as specified in this section, is recoverable, or due, transfers, or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all excisable goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the custody or possession of the person so succeeding may also be attached and sold by such officer empowered by the Central Board of Excise and Customs, after obtaining written approval from the commissioner of Central Excise, for the purposes of recovering such duty or other sums recoverable or due from such predecessor at the time of such transfer or otherwise disposal or change."



Therefore, the position becomes clear that between 1<sup>st</sup> of July 2001 to 1<sup>st</sup> of July 2004 there was no provision akin to Rule 230 or proviso to Section 11 in the statute book. Therefore, as on the date purchase of the assets took place in May 2003 no corresponding liability followed the transfer of assets in the hands of buyer to clear the dues of previous owner which had not been paid by him under the

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Central Excise Act .

It may further be noticed that Rule 230 (2) and Section 11 both operate in case that is transfer of business whether as a whole or in part. But the two provisions do not operate in contingency where the purchase of business is wholly or partly contemplated . Mere transfer of some or more assets of existing business carried on by the same owner does not permit authority to peruse such transferred assets or their transferee for recovery of dues against business or trade which continues to be owned by existing owner. The provision where under rule 230(2) and proviso of rule 11 clearly states the condition on which provision comes in operation viz. 'where the person dispose off his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person.'



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The condition for invoking Rule 230(2) or proviso to Section 11 relates to transfer of business or trade in whole or in part or change in ownership of trade or business, but it does not contemplate piecemeal transfer of assets divorced from the transfer of trade or business.



Be that it may, since 1.7.2001 in the present case, provision of section 11 was not brought retrospective effect and Rule 1944 having been superseded by Rules of 2001 and there being no provision akin to Rule 230 of Rules of 1944 when the the actual transfer of assets in question took place in May 2003. That being the position, there was no provision on the statute book under which respondent Excise Department are empowered to recover dues against M/s. J.M.S.P.Limited from the buyer of its assets in an auction under section 29 of the S.F.C. Act.

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15/11/2014

In absence of statutory provision the principle laid down in Isha Marbles case fully governs the facts of the present case. It was a case in which premises in question were transferred by the State Financial Corporation under section 29(1) and when new owner applied for release of electric connection to new premises, the electricity board has put it a condition to clear dues of the previous owner and without that it cannot get connection. The Apex Court did not sustain the stand of the Electricity Board that it could recover the dues of the previous owner from the successor of the premises where previous electric connection was installed and dues arise from said connection released to previous owner. In the absence of any statutory provisions or agreement in that effect the court found impossible to impose on the purchasers a liability which was not incurred by them. Where the premises comes to be owned or occupied by the auction purchaser, when such purchaser seeks supply of electric energy he cannot be called upon to



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clear the past arrears as a condition precedent to supply. There is no charge over the property. What matters is the contract entered into by the erstwhile consumer with the Board. The Board cannot seek the enforcement of contract liability against the third party.



Learned counsel for the respondent Union of India referred to Macson Marbles Pvt.Ltd, Vs Union of India 2003(158) E.L.T.424(S.C.), wherein Court held that such demand against subsequent buyer was sustainable under Rule 230(2) of the Central Excise Act. In the said case the Supreme Court upheld the decision of D.B. of this Court that Rule 230(2) clearly indicates that it is a mode of recovery of the excise duty from the assets owned by a predecessor and on his liabilities being assessed could be recovered even from the successor.

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However, in the present case Rule 230(2)

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or proviso to Section 11 was not available on the statute book as on the date of transfer nor any such obligation was created retrospectively.

Therefore, position becomes clear that between 1<sup>st</sup> of July 2001 to 1<sup>st</sup> of April 2004 there was no provision akin to Rule 230 or proviso to Section 11 of the Act on the Statute Book. Hence, as on the date of transfer of the assets took place in May 2003, no corresponding liability followed the transfer of assets in the hands of buyer to clear the dues of previous owner which had not been paid under the Central Excise Act and the provisions of S.F.C. Act took full effect whenever such assets have vested in buyer free from all encumbrance.

Accordingly, the writ petition is allowed and the impugned demand notices and recovery notices are quashed.

*RS*



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सचीवस प्रतिलिपि विभाग  
राजस्थान उच्च न्यायालय, जोधपुर



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There shall be no order as to costs in the facts and circumstances of the case.



*R.P. Vyas*  
(R.P. VYAS)J

*Rajesh Balia*  
(RAJESH BALIA)J.

*CK Thanvi*  
3/1/20

CKThanvi

सही प्रतिलिपि  
- 4 JAN 2020  
अधीक्षक प्रतिलिपि विभाग  
राजस्थान उच्च न्यायालय, जोधपुर