

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 22.11.2012*

+ **CO.A(SB) 43/2012**

**COMMISSION COMMERCIAL TAX,
GOVT. OF MADHYA PRADESH**

..... Appellant

Through Ms. Indrani Mukherjee, Adv. for
IARC (assignee of SCB)

versus

OFFICIAL LIQUIDATOR

..... Respondent

Through Mr. Mayank Goel, Adv. for the
Official Liquidator.
Mr. Jaswinder Singh, Adv. for
Central Bank of India.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 This appeal has been directed against the order of the Official Liquidator wherein the present appellant (Commercial Tax, Government of M.P- hereinafter referred to as the appellant) has been ranked as a preferential creditor. His submission is that in terms of the provisions of 33-C of the Madhya Pradesh General Sales Tax Act, 1958 and Section 53 of the M.P. Commercial Tax Act, 1994, any amount of tax/penalty/interest payable by a dealer or other person under this Act

shall be first charge on the property of the dealer or such person and as such he be treated pari pasu with the secured creditors.

2 The claim of the appellant is in the sum of Rs.5,03,09,807/-; they are sale tax, central tax and entry tax dues payable by the company (in liquidation) for its Morena Unit and Gwalior Unit. The appellant is aggrieved by the finding returned by the Official Liquidator that he be ranked as a preferential creditor and not a secured creditor. Attention has been drawn to Section 33-C of the Madhya Pradesh General Sales Tax Act, 1958 as also Section 53 of the M.P. Commercial Tax Act, 1994. A perusal of Section 53 of the M.P. Commercial Tax Act 1994 shows that this provision is subject to the provisions of Section 530 of the Companies Act. Section 530 of the Companies Act deals with the claims of revenue taxes, cesses and rates due from the company to the Central/State Government or to a local authority at the relevant date. Learned counsel for the appellant points out that although admittedly the Act of 1958 as also the Act of 1994 have been repealed but they have now been replaced with M.P. Vat Act of 2002; Section 33 has been

highlighted. Section 33 also speaks of the provisions of this Act being subject to the provisions of Section 530 of the Companies Act.

At this stage, learned counsel for the appellant has filed on record a Notification dated 06.08.2011; submission being that in Section 33 of the Act of 2002, the words ‘subject to the provisions of Section 530 of the Companies Act’ stand deleted. Submission being qualified by the argument that the provisions of M.P. Vat Act, 2002 clearly envisages the liability of tax to be the first charge and which is not subject to any other provision; as such, the Official Liquidator ranking the appellant in the category of a preferential creditor has committed a folly which order is liable to be set aside.

3 Arguments have been countered.

4 Section 529-A was introduced into the Companies Act by an amendment of 1985. This Section reads herein as under:-

“529A. Overriding preferential payment.—Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company—

(a) workmen’s dues; and

(b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of section 529 pari passu with such dues,

shall be paid in priority to all other debts.”

5 The statutory mandate contained in this provision is clear. It starts with a non-obstante clause. It clearly states that notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, the dues of the workmen and debts due to the secured creditors to the extent that such debts rank under clause (c) of the proviso to sub-section (1) of section 529 shall be paid pari passu and in priority to all other debts.

6 The claims made by the appellant relate to his tax dues. Details of the year have not been mentioned in the body of the appeal but the learned counsel for the appellant points out that most of these dues are prior to the year 1994 and would categorize under Section 53 of the M.P. Commercial Tax Act, 1994. Section 53 of the M.P. Commercial Tax Act, 1994 clearly stipulates that this provision is subject to the provision of Section 530 of the Companies Act, 1956.

7 As noted supra, Section 530 deals with the dues of the company to a Central or a State or a local authority of revenue taxes, cesses etc..

Section 530 (1)(a) of the Companies Act reads as under:-

“(1) In a winding up [subject to the provisions of section 529A, there shall be paid] in priority to all other debts—

(a) all revenues taxes, cesses and rates due from the company to the Central or a State Government or to a local authority at the relevant date as defined in clause (c) of sub-section (8), and having become due and payable within the twelve months next before that date;”

8. Tax liability of the company falls within Section 530 (1)(a).

Section 530 is subject to the provisions of Section 529-A and as such the said dues as contained in Section 530 (1)(a) are to be paid subject to the provisions of Section 529-A.

9 Judgments relied upon by the learned counsel for the appellant on this count are of no assistance to him. The judgment of the Apex Court reported as Central Bank of India Vs. State of Kerala & Others JT 2009 (3) SC 216 does not come to his aid as Section 529-A of the Companies Act was not the scope of discussion in terms of question which has been answered by the Apex Court and as is evident from para 2 of the judgment. The judgment of the Bombay High Court in State of Maharashtra Vs. Official Liquidator of Reliance Heat Transfer Pvt. Ltd. (In liquidation) (2004) 12, CompCas 648 which deals with the

provisions of Section 38-C of the Bombay Sales Tax Act, 1959 is inapplicable; it is even otherwise not binding on this Court.

10 Provisions of Section 529-A of Companies Act (a Central legislation) have to be override the provisions of Section 53 of the M.P. Commercial Tax Act of 1994 (a State legislation). Even otherwise as noted supra Section 53 of the Act of 1994 (under which the appellant is claiming his right) clearly specifies that the tax liability will be subject to the provisions of Section 530 of the Companies Act; Section 530 of the Companies Act has to be read subject to the provisions of Section 529-A of the said Act. There appears to be no conflict between the State Act and the Central Act. That apart, even if there is a conflict between a State legislation and a Central legislation, the Central legislation must prevail. See:- (2012) 7 SCC 106 Stat of Kerala and Others Vs. Mar Appraem Kuri Company Ltd.

11 Appeal has no merit. Dismissed.

INDERMEET KAUR, J

NOVEMBER 22, 2012

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