IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2015

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.30446 of 2015
and
M.P.No.1 of 2015

Textech Indo (India) P. Ltd.,
rep. by R.Krishnakumar, Manager
No.2B, A Blcok Pioneer Apartments,
No.1075, Avinash Road,
Coimbatore 641 018. .. Petitioner

Vs.

1. The Senior Intelligence Officer,
   Directorate of Revenue Intelligence,
   Ministry of Finance,
   No.1103, Trichy Road,
   Coimbatore - 641 018.

2. State Bank of India,
   Stressed Assets Management Branch,
   No.1112, Raja Plaza, Avinashi Road,
   Coimbatore - 641 037. .. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records relating to Seizure Memorandum issued under F.No.VIII/48/05-DRI CBE dated 22.09.2015 by the first respondent, quash the same to the extent of the petitioner and consequently direct the first respondent to drop all further proceedings against the petitioner in respect of the investigation by the first respondent in F.No.VIII/48/05/2015-DRI CBE under the Customs Act, 1962.

For Petitioner .. Mr.T.V.Suresh Kumar
for M/s.Genicon and Associates

For Respondents.. Mr.Velayudham Pichaiya for R1
Mr.M.L.Ganesh for R2

ORDER

By consent, the writ petition itself is taken up for final disposal.

2.Challenging the seizure memorandum dated 22.09.2015 issued by the first respondent and for a consequential direction to the first respondent to drop all further proceedings in respect of investigation, the petitioner has come forward with this writ petition.

3.The petitioner company is engaged in the business of importing and exporting textile machineries and its spare parts and on coming to know that legal action has been taken against one Gangotri Textiles Limited under the provisions of the SARFAESI Act, to sell the secured assets of the said textiles and the machineries imported by the said textiles under Export Promotion Capital Goods (EPCG) Scheme at concessional duty with export obligations, to avoid future legal issues, the petitioner sent a letter dated 30.06.2015 to the second respondent, requesting them to give confirmation about the EPCG obligation. After obtaining confirmation from the second respondent, the petitioner participated in the e-auction conducted on 08.07.2015 for the sale of machineries of Gangotri Textiles Limited and was declared as successful bidder. While so, the Joint Director General of Foreign Trade, Coimbatore, issued a public notice dated 14.07.2015 stating that Gangotri Textiles Limited has to fulfil its export obligation. Pursuant to the said notice, the second respondent published a reply notice dated 27.07.2015, informing that it only has first and exclusive charge in terms of Section 142 A of the Customs Act, 1962. According to the petitioner company, it has paid the entire amount of Rs.15,05,00,000/- and the second respondent also issued sale certificate and based on the same, it sold 44 machines out of 128. When things stood thus, on 22.09.2015, the first respondent served summon to the petitioner company and on the same day, issued the impugned seizure memorandum, thereby restraining the petitioner from removing the unsold machines. Aggrieved against the same, the petitioner has preferred the present writ petition.

4.Heard the learned counsel for both sides and perused the materials available on record.

5.After due deliberations, it has been brought to the notice of this Court that as per the recent amendment under Section 142 A of the Customs Act, the Department is prohibited to claim right over the property, if prior sale is completed. Section 142 A reads as under:

> "142-A Liability under Act to be First Charge: Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest or any other sum payable by an assessee or any

other person under this Act, shall, save as otherwise provided in Section 529A of the Companies Act, 1956 (1 of 1956), the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (51 of 1993) and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 (54 of 2002) be the first charge on the property of the assessee or the person, as the case may be."

In support of his submission, the learned counsel for the petitioner relied on the decision of High Court of Andhra Pradesh in IDBI Limited Vs. Deputy Commissioner (Arrears Recovery Cell) of C.E.&C., Hyderabad (2012 (283) ELT 188 (A.P.)), wherein it is held as under:

> "49.Unless otherwise specifically provided the Finance Act will come into force from 1st of April of the financial year commencing of that day (Commissioner of Income Tax, Visakhapatnam Vs. M/s.Vijayawada Bottling Co. Ltd. - R.C.No.85 of 1997 dated 06.01.2012). We have no doubt that though Section 11E of the Central Excise Act and Section 142A of the Customs Act, seemingly are enforceable from 01.04.2011, they would also exempt all the measures taken under DRT Act or the SARFAESI Act, which have not attained finality. As long as the property is not sold by the RO or authorised officer under the SARFAESI Act, and possession not handed over to highest auction bidder, all the transactions are saved by Section 11E of the Central Excise Act and Section 142A of the Customs Act."

6.Having regard to the factual position stated in this case, which is similar to the case referred to above, the impugned order is quashed and ** the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

mmi

Sd/-
Assistant Registrar
Dated : 12.10.2015

****Corrected as per order dated : 29.10.2015 and made herein**
Sd/- Assistant Registrar (CS-II)
Dated : 02.11.2015

True Copy

Sub-Assistant Registrar

To

1. The Senior Intelligence Officer,
   Directorate of Revenue Intelligence,
   Ministry of Finance,
   No.1103, Trichy Road,
   Coimbatore - 641 018.

To be substituted to the order already despatched on 12.10.2015

2. The State Bank of India,
   Stressed Assets Management Branch,
   No.1112, Raja Plaza, Avinashi Road,
   Coimbatore - 641 037.

+ 1 cc to Mr.Velayutham Pichaiya, Advocate SR 55420

+ 1 cc to Mr.M.L.Ganesh, Advocate SR 59180

+ 2 ccs to M/s.Genicon and Associates, Advocate SR 59286

W.P.No.30446 of 2015

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prk12/10

PSI 02.11.2015