THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Writ Petition No.25009 of 2005

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The jurisdiction of this Court under Article 226 of the Constitution of India is invoked by the Recovery Officer, Employees Provident Fund Organisation, questioning the action of the Commercial Tax Department in proceeding to auction the property on 25.11.2005 contending that the petitioner has the first charge over the assets of M/s.Targoff Pure Drugs Ltd; and the subject property was attached by them on 03.01.2002 for recovery of the provident fund dues of Rs.20,01,021/-.

Sri T.Balaji, learned counsel for the petitioner, would place reliance on Section 11(2) of the Employees Provident and Miscellaneous Provisions Act, 1952 to contend that the Employees Provident Fund Organisation has the first charge over the properties of the company. Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, would, however, place reliance on Section 26 of the A.P.Value Added Tax Act, 2005 to contend that it is the Commercial Tax Department which has the first charge over the properties, for recovery of arrears of sales tax due to the Government in excess of Rs.4.00 crores.

Both Section 11(2) of the Central Act and Section 26 of the State Act contain a non obstante clause. As to which of them would have priority is a matter which necessitates detailed examination. We are, however, saved the trouble of examining this issue as Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, on instructions, would submit that, since no bidder came forward to submit a bid for a sum higher than the upset price, the auction scheduled to be held on 25.11.2005 did not take place; the Company i.e, M/s.Targoff Pure Drugs Ltd. is under liquidation; the official liquidator has been appointed as the liquidator of the company; and the Commercial Tax Department has also filed Form No-66 claiming payment of the sales tax arrears due to them .

It does appear that no auction was held by the Commercial Tax Department, and the subject property has not been sold by them. As it now transpires that the company is under liquidation any grievance, which the petitioner may have, can only be against the liquidator of the company, and not the respondent herein.

The cause in the writ petition does not survive. It is made clear that this order shall not preclude the petitioner from availing such other remedies, as are available to them in law, for recovery of the provident fund dues of employees of M/s.Targoff Pure Drugs Ltd. The writ petition is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 17.03.2016
JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

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