THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION NO.37864 of 2014

ORDER: (per SK,J)

The Commissioner of Central Excise, Guntur, and the Deputy Commissioner of Central Excise, Vijayawada, are the petitioners in this case. They assail the Debt Recovery Certificate dated 13.09.2006 issued by the Debts Recovery Tribunal, Hyderabad, in O.A.No.80 of 1999 and the auction proceedings of M/s.Pridhvi Asset Reconstruction and Securitisation Company Limited, Hyderabad, the second respondent herein, on the ground that the same are violative of Section 142 of the Customs Act, 1962 (for short, 'the Act of 1962'). A consequential direction is sought to set aside the same.

In the affidavit filed in support of the writ petition, the petitioners stated that M/s. East India Granites Limited, Krishna District, the first respondent herein, was permitted to import duty free capital goods, consumables, plant and machinery etc., subject to the condition that it would export its entire production for five years. However, as it failed to live up to this condition, which was essential for its procuring the goods duty free, show-cause notice dated 16.03.2001 was issued to it for non-fulfilment of the export obligation and requiring it to pay customs duty on the imported goods to the tune of Rs.10,40,15,502/- along with central excise duty on indigenous goods to the tune of Rs.6,93,183/-.

Order-in-Original dated 10.03.2003 was passed by the Commissioner, Customs and Central Excise, Guntur Commissionerate, confirming the aforestated customs duty under Section 72 of the Act of 1962. Redemption fine of Rs.15.00 crore was also imposed upon the first respondent company by a separate Order-in-Original. In order to realise these arrears from the said company, the central excise authorities attached various movable and immovable properties. The immovable property so attached was an extent of Acs.13.19 cents situated at Bheemavaram Village, Jaggaiahpet Mandal, Krishna District. While so, the Industrial Development Bank of India, who had offered a loan to the first respondent company on the strength of the mortgage created over the same immovable property, initiated recovery proceedings before the Debts Recovery Tribunal, Hyderabad, in O.A.No.80 of 1999. These proceedings culminated in the Recovery Certificate dated 13.09.2006. This was the cause for institution of this writ petition by the central excise authorities.

Though the central excise authorities seem to have proceeded on the assumption that the mortgaged property was brought to sale pursuant to the recovery certificate aforestated, the counter affidavit filed by the second respondent company indicates otherwise. The IDBI bank, even before it secured the Recovery Certificate dated 13.09.2006 pursuant to the order of the same date passed in O.A.No.80 of 1999, initiated proceedings independently under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), by issuing demand notice dated 06.12.2005 under Section 13(2) thereof. It then assigned the subject loan account of the first respondent company to the second respondent company *vide* Assignment Deed dated 28.03.2014 registered as Document No.2093 of 2014 on the file of the Sub-Registrar, Serilingampally, Ranga Reddy District. It was the second respondent company that then brought the subject property to sale on 30.09.2014 under the provisions of the SARFAESI Act, whereupon the fifth respondent emerged the highest bidder in so far as the immovable property is concerned, while the sixth respondent became the highest bidder for the plant and machinery.

Significantly, though the central excise authorities, the writ petitioners, filed W.P.M.P.No.7463 of 2015 in this writ petition seeking to implead the auction purchasers, they took no steps to assail the SARFAESI proceedings, whereby they attained that status. No challenge was laid to the sale held by the second respondent company under the provisions of the SARFAESI Act. Surprisingly so, as the petitioners impleaded the second respondent company at the initial stage itself. In effect, we have no redressable cause before us in as much as the Recovery Certificate dated 13.09.2006 issued by the Debts Recovery Tribunal, Hyderabad, in O.A.No.80 of 1999, which was subjected to challenge, has nothing to do with the sale which thereafter crystallised, creating rights in the fifth and sixth respondents herein. In their own wisdom, the petitioners did not choose to lay a challenge to either the SARFAESI proceedings or the said sale that culminated therefrom.

Even otherwise, we find that in the light of Section 142A of the Act of 1962, the dues that are sought to be realised by the petitioners do not constitute a first charge, when there is a rival claim arising under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, or the SARFAESI Act. This Court had occasion to consider this issue in IDBI LTD v. DEPUTY COMMISSIONER (ARREARS RECOVERY CELL) OF C.E. & C., HYDERABAD[1] and held to the effect that the department cannot claim any priority in the recovery of Government dues over the

[1] 2012 (283) E.L.T. 188 (A.P.)

claim of a bank, be it under an order of the Debts Recovery Tribunal or an order or proceedings taken under the SARFAESI Act.

Thus, for reasons more than one, we find no merit in this writ petition. The writ petition is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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SANJAY KUMAR,J

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P.KESHAVA RAO,J

Date:19.02.2018

GJ