**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 14248 OF 2018

Siddhi Sugar and Allied Industries Ltd.,
At Post Maheshnagar, Ujana,
Taluka Ahmedpur, District Latur,
Through its Chief Accountant
Laman S/o Rajaram Patil,
Age : 51 Years, Occu. : Service as
Chief Accountant, R/o as above. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Finance Department,
Mantralaya, Mumbai – 32.

2. The Commissioner,
Central G.S.T. & Central Excise,
Aurangabad Region,
Town Centre, CIDCO, Aurangabad.

3. The Assistant Commissioner,
Central G.S.T. & Central Excise,
Nanded Division, Nanded.

4. The Superintendent,
Central G.S.T. and Central Excise,
Latur (Rural) Range, Latur.

5. M/s Balaghat Sahakari Sakhar
Karkhana Ltd., Old Ausa Road,
Latur, through its Liquidator/
District Deputy Registrar.

6. Maharashtra State Co-operative Bank
Ltd., Regional Office, Nanded
180, Vasant Nagar, Nanded – 431 605,
Through its Joint Manager. .. Respondents

Shri Nitin B. Suryawanshi, Advocate for the Petitioner.
Shri K. B. Jadhavar, A.G.P. for the Respondent No. 1.
Shri Dwarkadas S. Ladda, Advocate for Respondent Nos. 2 to 4.
Shri D. B. Bhange, Advocate for the Respondent No. 6.
The Respondent No. 5 is served.

CORAM : S. V. GANGAPURWALA AND A. M. DHAVALE, JJ.

RESERVED FOR JUDGMENT ON : 27.02.2019

JUDGMENT PRONOUNCED ON : 26.04.2019

JUDGMENT (*Per S. V. Gangapurwala, J.*) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioner is a purchaser of the movable and immovable assets of the respondent No. 5/Karkhana in an auction proceedings at the behest of the respondent No. 6/bank under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (for short "Securitization Act"). The respondent Nos. 2 and 3 are claiming the recovery of excise dues outstanding against the respondent No. 5/Karkhana from the petitioner. The petitioner assails the said action in the instant petition.

3. Mr. Suryawanshi, the learned advocate for the petitioner submits that, the petitioner is a bonafide purchaser in the auction conducted by the respondent No. 6/bank of movable and immovable assets of the respondent No. 5 under the Securitization Act. The dues of the secured bank shall have priority claim over the excise department. The learned counsel to buttress his submissions relies on the judgment of the Division Bench of this Court in a case of **National Steel and Agro Industries Limited Mumbai Vs. State of Maharashtra and others** reported in ***2015 (2) AIR Bombay Report 805***, so also another judgment of the Division Bench of this Court in a case of **Sherwood Resorts Pvt. Ltd. and another Vs. State of Maharashtra and others** reported in ***(2016) 161 AIC (Sum 2) 1*** and another judgment of the Division Bench of this Court in a case of **M/s Sonoma Management Partners Pvt. Ltd. Vs. Bank of Maharashtra through its Chairman and others decided on 22.11.2016 in Writ Petition No. 4188 of 2014.**

4. According to the learned counsel, the Excise Department did not attach the properties of the respondent No. 5/Karkhana purchased by the petitioner. The dues of the Excise Department were never notified as encumbrance over the property in the sale certificate, nor in the sale deed pursuant to which the petitioner has purchased the property.

5. Mr. Ladda, the learned advocate for respondent Nos. 2 to

4/Excise Department submits that, the respondent No. 5 assessee did not pay the total dues of the respondents i. e. Rs. 26,14,644/- plus mandatory penalty of Rs. 26,29,644/- and interest. The respondent No. 6/bank had the knowledge of the outstanding dues of the Central Excise Department. The respondent No. 4 issued letters to the respondent No. 5/Karkhana and the District Deputy Registrar, Co-operative Societies, Latur, who was acting as administrator/liquidator of the respondent No. 5. The administrator/liquidator of the respondent No. 5 was having the knowledge of confirmed demand of Central Excise Department. The tender notice published by the respondent No. 6/bank for sale of the respondent No. 5 is with the note that the property is sold on as is where is basis and with unknown encumbrances not known by the bank. After the purchase, the petitioner also approached the respondent No. 4 for Central Excise and Service Tax registration. Unless and until the earlier dues of the respondent No. 5 are recovered and unless the old registration in the name of the respondent No. 5 is cancelled, it is not possible to continue the second fresh registration in the name of the petitioner for the said premises again. In view of the clause in the tender, the purchaser of the respondent No. 5 is liable to pay the Central Excise dues as per the provisions of Sec. 11E of the Central Excise Act and also similar provisions under the Finance Act, 1994. The sale certificate for movable property issued does not speak about unknown encumbrances, which ought to have been considered by the respondent No. 6/bank while arriving at reserve price of Rs. 2303.91 Lakhs.

6. The learned counsel further submits that, the petitioner participated in tender accepting the clause in the tender that the property is sold on as is where is basis with unknown liability. The dues of the Central Excise Department are government dues. The judgments relied by the petitioner are not applicable to the present case. The learned counsel relies on Sec. 11E of the Central Excise Act and submits that the liability under Central Excise Act is first charge. Sec. 37 of the Securitization Act does not bar application of the provisions of the Central Excise Act. The learned counsel relies on the judgment of the Apex Court in a case of **M/s Macson Marbles Pvt. Ltd. Vs. Union of India** reported in ***2003(158) ELT 424 (S.C.)***. The learned counsel further submits that, the respondent Nos. 2 to 4 are entitled to recover an amount of Rs. 52,44,288/- plus interest from the petitioner. In fact, the petitioner has also paid part amount of Rs. 5.39 Lakhs and agreed to pay the balance in installments. The learned counsel also relies on the judgment of the Apex Court in a case of **M/s Rana Girders Ltd. Vs. Union of India and others** reported in ***AIR 2013 SC 3422*** and submits that, the petitioner has purchased the entire unit and as such is liable to pay the dues. The tender notice was for sale of entire unit of the respondent No. 5/Karkhana. There is also delay in filing the writ petition by the petitioner.

7. Upon having considered the contentions of the parties, the

moot question for determination is, "Whether the Central Excise Department is entitled to recover the Central Excise dues of the erstwhile owner viz respondent No. 5/Karkhan from the auction purchaser/petitioner having purchased the movable and immovable assets of the respondent No. 5 in auction proceedings conducted by the respondent No. 6 secured creditor under the provisions of the Securitization Act ?"

8. It appears that, the respondent No. 6 is a secured creditor of the respondent No. 5. The respondent No. 5 did not pay the dues of the respondent No. 6. The respondent No. 6 invoked the provisions of the Securitizatin Act. It also appears that, the respondent No. 6/bank took possession of the secured assets U/Sec. 13(4) of the Securitization Act. The respondent No. 6 issued tender notice for the sale of the assets that is (movable and immovable) of the respondent No. 5/Karkhana. The petitioner was declared as the successful bidder. Immovable and movable assets were placed in possession of the petitioner under the panchanama dated 09.08.2011. Subsequently sale certificate is also issued in favour of the petitioner in respect of various assets of the respondent No. 5. The sale certificate for immovable property also recites that the sale of the schedule property was made free from all encumbrances known to the secured creditor listed in Annexure – A. The dues of the Excise Department were never listed. The dues of the Excise Department were not clarified/detailed in the tender notice or the sale certificate.

Perusal of the tender notice and the sell certificate, it is manifest that the respondent No. 6 has resorted to an action U/Sec. 13(4) of the Securitization Act for sale of the movable and immovable assets of the respondent No. 5. The respondent No. 6 did not sell the running business of the respondent No. 5 to the petitioner, but had only sold the movable and immovable assets. We do not find any document of whatsoever nature to hold that the respondent No. 6/bank had sold the running business of the respondent No. 5 by way of auction to the petitioner. The sale certificate specifically recites about the property of the respondent No. 5.

9. The petitioner cannot be made liable to pay the excise dues of the erstwhile owner of the property only because the petitioner has purchased the property in auction conducted under the provisions of the Securitization Act.

10. Excise dues is not a liability arising out of land, building or machinery. The excise duty is payable on manufacture of excisable goods. The excise department cannot claim priority charge over the respondent No. 6/bank. The reliance placed by the respondent Nos. 2 to 4/department in a case of **M/s Rana Girders Ltd. Vs. Union of India and others** would not be of any avail to the respondent Nos. 2 to 4. On the contrary the said judgment would go against the respondents. In the said judgment the Apex Court observed that, it is only in those cases where the buyer has purchased the entire defaulting unit, entire

business itself, it would be his responsibility to discharge the liability of Central Excise as well. Otherwise the subsequent purchaser cannot be fastened with the liability relating to the dues of the Government unless there is a specific provision in the statute claiming first charge from the purchaser.

11. Section 11E of the Central Excise Act, relied by the learned advocate for respondent Nos. 2 to 4 reads thus :

The Central Excise Act, 1944.

1. …..........

2. …..........

[11E. 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 or the rules made thereunder shall, save as otherwise provided in section 529A of the Companies Act, 1856, (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.']

12. Section 11E of the Central Excise Act provides that the duty payable by an assessee under the Central Excise Act or the Rules made thereunder shall, save as otherwise provided under the Securitization Act 2002 and the other acts detailed therein be the first charge on the property of the assessee or the person as

the case may be. Section 11E of the Central Excise Act will have to be read subject to the provisions of the Securitization Act. Section 35 of the Securitization Act provides that the provisions of the Securitization Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. We are not referring to Section 26E of the Securitization Act. Said provision was not in force, at the time the auction had taken place and the petitioner had purchased the property. However, without aid of Section 26E of the Securitizatin Act, it can be safely concluded that the secured creditor/bank shall have a priority claim over the claim of the excise department.

13. The respondent Nos. 2 to 4 have also placed reliance on Sec. 37 of the Securitization Act. The said provision also does not inure to the benefit of respondent Nos. 2 to 4. Section 37 of the Securitization Act says that the provisions of the said Act shall be in addition to and not in derogation of the acts enumerated therein. The Central Excise Act does not find place in Section 37 of the Securitization Act.

14. Moreover, at the time the movable and immovable assets of the respondent No. 5 were put to auction by the respondent No. 6 and the petitioner purchased the same in auction till then, the respondent Nos. 2 to 4/Excise Department had not attached any of the movable or immovable property of the respondent No. 5. No

charge was created over the assets of the respondent No. 5 of the excise dues. The Central Excise dues were also not crystalized as on the date the property was put to auction and purchased by the petitioner. The order of recovery was passed by the Central Excise Department in the year 2012 that is after the sale of the assets of the respondent No. 5. For the aforesaid reasons we hold that the respondent Nos. 2 to 4 cannot demand the payment of excise dues of the respondent No. 5/Karkhana from the petitioner on the ground that the petitioner is purchaser of the movable and immovable assets of the respondent No. 5 in auction at the behest of the respondent No. 6/secured creditor under the provisions of the Securitization Act.

15. In the light of the above, the impugned communications are quashed and set aside. In case the respondent Nos. 2 to 4 have recovered amount from the petitioner towards excise dues of the respondent No. 5, the same shall be refunded to the petitioner within a period of three (03) months from today.

Rule is made absolute in above terms. No costs.

Sd/-	**Sd/-**
[A. M. DHAVALE, J.]	**[S. V. GANGAPURWALA, J.]**

bsb/April 19