

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.01.2020	Pronounced on 22.01.2020
--------------------------	--------------------------

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MRS. JUSTICE R.HEMALATHA

WP.No.32285/2019 & WMP.Nos.32575 & 32577/2019

The Head, Fleet Management
M/s.Social Logistics Ltd.,
Branch Office [Trucking Division] at
131, GNT Road, Poniammanmedu
Madhavaram, Chennai 600 110. ... Petitioner
vs.

1.The Recovery Officer
Debt Recovery Tribunal-II
4th Floor, Spencer Tower
770-A, 4th Floor, Anna Salai
Chennai, Tamil Nadu 600 002.

2.State Bank of India
represented by its
Assistant General Manager
Overseas Branch, New No.86,
[Old No.21], Rajaji Salai,
Chennai 600 001.

3.The Manager
Bank of Baroda
Bangalore Main Branch
Kempe Gowda Road,
Prithvi Building, Bangalore 560 009. .. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records on the file of the 1st respondent in DRC.No.34/2007 in OA.No.51/2005 culminating in order dated 08.11.2019 passed by the 1st respondent and quash the same as illegal, arbitrary and devoid of merits.

For Petitioner : Mr.Vijay Narayan, Senior Counsel
assisted by Mr.Anand Sasidharan

For Respondents: Mr.Om Prakash, Senior Counsel
assisted by Mr.K.Chandrasekaran

O R D E R

M.SATHYANARAYANAN, J.

(1)The writ petitioner who suffered the impugned order of attachment dated 08.11.2019 passed by the 1st respondent in attaching 2 Cash Credit Accounts and 3 Current Accounts of the petitioner in Bank of Baroda, Bangalore Main Branch, EC Street, Chennai-1, A5, Nehru Ground, Faridabad and Trichy Road, Coimbatore-5 respectively, had filed this writ petition.

(2)The facts leading to the filing of this writ petition, briefly narrated and relevant for the purpose of disposal of this writ petition, are as follows:-

A)The writ petitioner is a Public Limited Company, incorporated under the provisions of the Indian Companies Act, 1956, having its registered office at Door No.73, Armenian Street, Chennai 600 001, and it is having its offices at various places in India. The petitioner is engaged in the business of providing various logistics related services including warehousing services, Container Freight stations, stevedoring and rail and road transport services. The petitioner would state that it is holding current, Overdraft and Cash Credit Accounts and also obtained various financial facilities from the 3rd respondent - a Public Sector Bank and insofar as Overdraft and Cash Credit Accounts are concerned, it is a credit facility / loan facility provided by the 3rd respondent - Bank to the petitioner and there are no surplus funds of the petitioner, is kept available at any point of time in the said accounts.

B)The petitioner would further aver that M/s.Karware Impex Private Limited [in short 'M/s.Karware Impex'], imported stainless steel sheets and coils of grade AISI-304 under Duty Exemption Entitlement Scheme [DEEC]. As per the conditions of the advanced license under EXIM Policy [DEEC Scheme] as well as the Customs Notifications stipulated that the duty free imported goods, shall not be disposed of or utilised in any manner except for utilization in discharge of export obligations by them and as a natural corollary, M/s.Karware Impex, was never allowed to divert the imported stainless steel sheets and coils of Grade AISI-304 in the local market and that apart, as per the Customs Notification No.43/2002-CUS dated 19.04.2002, the materials imported under the DEEC shall not be transferred to anybody or sold.

C)The Additional Director General of the Directorate of Revenue Intelligence [DRI], had issued a show cause notice to M/s.Karware Impex, on suspicion that the said imported goods were illegally diverted to the local market and initiated investigation. During the course of investigation, DRI had seized 119 Nos. of Stainless Steel sheets and 79 Numbers of Coils, totalling to 198 Nos. and shifted the said goods to the godown of the petitioner on 20.04.2005.

- D) It is the specific case of the petitioner that the said goods were stored in their godown on behalf and as per the directions of DRI and found that the storage of the said goods in their godown were causing obstacles in their day-to-day operations and that apart, the construction of road at its godown was also creating extreme difficulty in carrying out the operational and maintenance activities. The petitioner, repeatedly requested DRI to remove the said stored goods from their godown at the earliest.
- E) The writ petitioner, on becoming aware of the fact that M/s.Karware Impex, seem to have availed loan facilities from the 2nd respondent - Bank and defaulted in repayment of the dues which led to the 2nd respondent - Bank filing OA.No.51 of 2005 under the provisions of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 [in short 'RDDBFI Act']. The said OA.No.51 of 2005 was ordered and a Recovery Certificate dated 31.01.2007 in DRC.No.34 of 2007 was issued enabling the 2nd respondent - Bank to recover a sum of Rs.6,15,50,144.08p. [Principal - Rs.4,94,65,936.65p.; Interest - Rs.1,19,34,202.43p. and Cost - Rs.1,50,005/-] from M/s.Karware Impex and Thiru.V.Subhramaniyam with a default clause, granting liberty to the 2nd respondent - Bank to sell the Schedule Mentioned Mortgaged/hypothecated Properties 'A', 'B1', 'B2', and 'B3'.
- F) The petitioner took a stand that admittedly, the name of the petitioner did not find place in the said Recovery Certificate and moreover, the petitioner is a total stranger to the loan transaction between the 2nd respondent - Bank and M/s.Karware Impex and as a consequence, there is no Privity of Contract whatsoever between the petitioner and the 2nd respondent - Bank.
- G) It is also pointed out by the petitioner that in terms of the Recovery Certificate dated 31.01.2007 in DRC.No.34 of 2007, the 2nd respondent - Bank was given liberty only in respect of the mortgaged / hypothecated properties mentioned in the Schedule and if the money is realised out of such sale is not sufficient to satisfy the dues, then only the 2nd respondent - Bank shall proceed for the balance amount by way of attachment. It is also stated by the petitioner that the goods which were ordered to be kept in the godown of the petitioner by DRI, are not covered in the said Schedule.
- H) The petitioner would further state that the 1st respondent, has passed an Order of Attachment on 06.09.2007 against the defendants 1 and 2 and here again, the petitioner was not cited as a party and the description of the properties in the Order of Attachment is also not specific and the goods kept in the petitioner's godown on behalf of DRI, were also not specifically mentioned either in the said Recovery Certificate or in the Order of Attachment dated 06.09.2007.
- I) The petitioner would further aver that the copy of the Order of Attachment was furnished to them and vide letter

dated 14.09.2007 and the petitioner, in turn, had communicated the Order of Attachment to DRI. The DRI responded to the letter of the petitioner, vide Reply dated 24.09.2007, stating among other things that the goods kept in the petitioner's godown, cannot be subject of attachment order and further directed the petitioner, not to release or alienate the goods till finalisation of the adjudication proceedings under the Customs Act. The petitioner, in the light of the response of DRI dated 24.09.2007, continued to retain the goods in their godown on behalf of DRI.

- K) M/s. Karware Impex, vide their letter dated 05.10.2007, informed the petitioner that the Customs Authorities had dropped the adjudication proceedings against them and therefore, made a request for release of goods to them and a copy of the order of the Commissioner of Customs [Export], Seaport, Chennai, dated 03.10.2007, was also sent to the petitioner.
- L) The petitioner, on receipt of the letter of M/s. Karware Impex dated 05.10.2007 and also the above cited order of the Commissioner of Customs [Exports], Seaport, Chennai dated 03.10.2007, had contacted DRI and as per the oral instructions of DRI and the letter dated 24.09.2007, it had released the goods to M/s. Karware Impex on 05.10.2007 and the said fact was also informed to the Additional Director of DRI, vide letter dated 06.10.2007 and it was also duly acknowledged and the said official did not object or protest to the release made by the petitioner.
- M) The petitioner would further aver that the 2nd respondent - Bank had filed two petitions under Section 19[25] of RDDBFI Act read with Rule 18 of Debt Recovery Tribunal [Procedure] Rules, 1993 before the Debt Recovery Tribunal-II at Chennai [in short 'DRT-II'] and the said petitions were numbered as IA.Nos.798 and 799 of 2007 respectively. The prayer in IA.No.798 of 2007 was to direct the respondents to maintain status quo as on the date of Attachment on 06.09.2007 by restoring forth with the stocks belonging to M/s. Karware Impex with a consequential prayer and in IA.No.799/2007, the 2nd respondent - Bank prayed for appropriate orders against the petitioner herein for disobeying the Order of Attachment.
- N) The petitioner took a legal plea in terms of Section 19 [25] of RDDBFI Act, that the Tribunal alone can adjudicate the said applications ; but the Tribunal had delegated its judicial functions to the 1st respondent. The 1st respondent had disposed of IA.Nos.798 and 799 of 2007 vide order dated 10.04.2008 and declared the petitioner as a 'Defendant in default' and further held that the petitioner along with DRI and Customs Authorities, are personally liable.
- O) It is the stand of the petitioner that the petitioner was not a party to any earlier proceedings and therefore, the

only course available is to treat the transfer by the 1st defendant to third parties as void and therefore, the Order of the Recovery Officer dated 10.04.2008 holding the petitioner personally liable for a sum of Rs.4.7 Crores and odd, is wholly illegal, baseless and untenable.

- P) The petitioner aggrieved by the said order, filed an Appeal in A.No.6 of 2008. So also, M/s.Karware Impex, Thiru.V.Subhramaniyam ; DRI and the Commissioner of Customs.
- Q) The Presiding Officer of DRT-II, vide order dated 24.12.2009, had passed a common order, dismissing the appeals filed by the petitioner ; M/s.Karware Impex and Thiru.V.Subhramaniyam, with exemplary cost. The petitioner, aggrieved by the said order, filed an Appeal in MA.NO.265 of 2010 before the Debt Recovery Appellate Tribunal, Chennai [in short 'DRAT'] and pending disposal of the same, took out an application in IA.No.608 of 2010 praying for stay of the operation of the impugned order passed by DRT-II, Chennai. Initially, an order of interim stay was granted.
- R) The petitioner would state that the case was handled by Mr.M.P.Muthukumar, who was an employee incharge of legal affairs and a counsel was also engaged and subsequently, Mr.M.P.Muthukumar left the services of the petitioner on 31.05.2013 and the case pending before DRT was omitted to be mentioned in the list of pending cases and that apart, there was a change in the Management of the petitioner Company in the year 2011 and since proper follow-up could not be made, the appeal came to be dismissed for default on 03.07.2013 and it came to the knowledge of the petitioner only on 28.11.2018 and no communication of the order of the 1st respondent was also done in terms of Rule 20 of the Debt Recovery Appellate Tribunal [Procedure] Rules, 1994.
- S) The petitioner, thereafter, received the Demand Notice dated 23.11.2018 on 28.11.2018 from the 2nd respondent - Bank, enclosing the order of DRAT, in dismissing the appeal for default and despite a lapse of nearly 5 years from the date of dismissal of the appeal for default, the 2nd respondent-Bank did not take any steps.
- T) The petitioner, after becoming aware of the order in dismissing the appeal for default, filed applications to condone the delay of 1970 days in filing the application to set aside the order dated 03.07.2013 in dismissing the appeal in MA.No.265 of 2010 for default and for restoration of the same. DRAT, dismissed the said condone delay application as well as the application filed for restoration in IA.No.2 of 2019 vide order dated 03.01.2019.
- U) The petitioner filed WP.No.2645 of 2019, praying for issuance of a writ of certiorarified mandamus, to call for the records relating to the order of dismissal dated

03.01.2019 in IA.No.2 of 2019 in MA.No.265 of 2010 with a consequential prayer and it was entertained. The 2nd respondent - Bank had also filed a counter affidavit. The Hon'ble First Bench of this Court, vide order dated 26.03.2019, had dismissed the said writ petition. The petitioner challenged the said order by filing SLP [Civil] No.16514 of 2019 before the Hon'ble Supreme Court of India and vide order dated 22.07.2019, the said Special Leave Petition was also dismissed.

V) The petitioner would further aver that in the interregnum, the 2nd respondent - Bank initiated proceedings against the petitioner under Section 9 of the Insolvency and Bankruptcy Code [in short 'IBC'] before the National Company Law Tribunal [NCLT] at Chennai in IBA No.114 of 2019. It is brought to the knowledge of this Court that the said petition was also dismissed as not maintainable. It is also brought to the knowledge of this Court by a Memo dated 20.01.2020 filed on behalf of the petitioner that the 2nd respondent-bank preferred an appeal against the above said order of NCLT dated 19.11.2019 in Company Appeal [AT] [Insolvency] No.16 of 2002 and the said Tribunal has passed an order dated 08.01.2020 dismissing the appeal as devoid of merits, after condoning the delay of 17 days in preferring the appeal. The said Memo came to be filed with Leave of this Court, after orders were reserved on 07.01.2020.

W) The petitioner, to its shock and surprise, had received the Impugned order of Attachment dated 08.11.2019 passed by the 1st respondent under Section 25[a], 28[3][i][iv], 28 [3][x] of RDDB&FI Act, 1993 and Rule 31 of II Schedule of the Income Tax Act, 1961, attaching 2 Cash Credit and 3 Current Accounts of the petitioner maintained in various

branches of Bank of Baroda and challenging the legality of the said order, has filed the present writ petition.

(3) Mr. Vijay Narayan, learned Senior counsel assisted by Mr. Anand Sasidharan, learned counsel for the petitioner, made the following submissions:-

A) Admittedly, the Recovery Certificate in DRC No.34 of 2004 dated 31.01.2007, the petitioner was not made as a party. So also in the order of Attachment dated 06.09.2007 and as such, the impugned order of Attachment passed by the 1st respondent in directing the 3rd respondent - Bank to hold the Cash Credit and Current Accounts of the petitioner Company and freezing any form of withdrawal from the said Accounts until further orders, is wholly unsustainable in law.

B) The mandatory requirement prescribed in Rule 2 of II Schedule of the Income Tax Act, 1961, i.e., by issuance of a notice by the Recovery Officer to the defaulter calling upon the defaulter to pay the amount mentioned in the Certificate within a period of fifteen days, has not been complied with and it is also in gross violation of principles of natural justice.

- C) In terms of Rule 3 of the II Schedule of the Income Tax Act, 1961, the 1st respondent is prohibited from taking action and execution before expiry of fifteen days from the date of notice issued under Rule 2 and therefore, the impugned order is in violation of the said Rule.
- D) The Overdraft and Cash Credit Accounts maintained with the 3rd respondent - Bank are Credit facilities extended by the said Bank and as such, no surplus funds of the petitioner are available in the said Accounts at any given point of time and therefore, the impugned Order of Attachment, is per se improper and illegal.
- E) Section 28 of RDDB Act, speaks about the other modes of recovery and it deals with the recovery of the amount of debt by one or more of the modes provided under the said section and as per sub-section [3][x] of Section 28, a person who received notice, fails to make any payment, the said person shall be deemed to be defendant in default in respect of the amount specified in the said notice and admittedly, the petitioner was not a party in the Recovery Certificate dated 31.01.2007 in DRC.NO.34 of 2004, which came to be issued in pursuant to the order dated 14.12.2006 in OA.No.51 of 2005 and as such, the petitioner cannot be termed as 'defendant in default'.
- F) IA.Nos.798 and 799 of 2007 filed by the petitioner came to be dealt with by DRT-II, Chennai, under Section 19[25] of RDDB Act and such a power cannot be delegated to the 1st respondent and as such, the impugned Order of Attachment suffers on account of nullity also.
- G) The petitioner also pleads limitation for the reason that the order in OA.No.51 of 2005 came to be passed on 14.12.2006 followed by the order of Recovery Certificate dated 31.01.2007 and after the dismissal of MA.No.265 of 2010 filed by the petitioner on 03.07.2013, further action should have been taken within three years as prescribed under Article 137 of the Schedule to the Limitation Act and admittedly, the 2nd respondent did not take any action for a period of five years and on that ground also, the order impugned, is liable to be set aside for want of limitation.
- H) The petitioner would further submit that the goods entrusted to the petitioner by DRI, till the completion of the customs adjudication proceedings and admittedly, the adjudication proceedings went in favour of M/s.Karware Impex and the petitioner had returned the goods as per the instructions of DRI and that apart, the goods are subject to confiscation proceedings of the Customs and the same cannot be attached by the Recovery Officer and on that ground also, the petitioner cannot be mulcted with any liability or recovery proceedings in respect of the balance amount sought to be recovered from the original borrowers.
- I) The learned Senior counsel would submit that though there is an alternate remedy available before DRT, in the light of flagrant violation of the statutory provisions, it is

not necessary on the part of the petitioner to avail the alternate remedy and once again, stressed the point that the Cash Credit Accounts cannot be subject matter of attachment and on that ground also, the impugned order is liable to be set aside.

(4) The learned Senior counsel, in support of his submissions, has placed reliance upon the following judgments:-

A) 70 Law Weekly 1016 [K.M.Adam V. The Income Tax Officer, 2nd Additional II Circle, Madras] ;

C) 1998 [8] SCC 1 [Whirlpool Corporation Vs, Registrar of Trade Marks, Mumbai and Others] ;

D) 2001 [6] SCC 534 [Dhurandhar Prasad Singh V. Jai Prakash University and Others] ;

E) 2003 [4] SCC 257 [Jamal Uddin Ahmad V. Abu Saleh Najmuddin and Another] ;

F) 2003 SCC Online AP 743 : AIR 2004 AP 198 [DB] [Estate Officer and Manager [Recoveries], A.P.Industrial Infrastructure Corporation Ltd and Another V. Recovery Officer, Debts Recovery Tribunal, Bangalore and Others] ;

G) 2003 [6] SCC 230 [Dwarka Prasad Agarwal [D] by LR and another V. B.D.Agarwal and Others] ;

H) 2004 [8] SCC 706 [Balvant N.Viswamitra and Others V. Yadav Sadashiv Mule [Dead] through LR and Others] ;

I) 2010 [7] Maharashtra Law Journal 41 [Sargam Foods Pvt Ltd., and Another V. State of Maharashtra and Others] ; and

J) the judgment dated 03.12.2019 made in Civil Appeal No.9170 of 2019 [M/s.Embassy Property Developments Pvt. Ltd. V. State of Karnataka and Others].

(5) Per contra, Mr.Om Prakash, learned Senior Counsel assisted by Mr.K.Chandrasekaran, learned counsel for the respondents has drawn the attention of this Court to the materials placed and would submit that the Order of Attachment dated 06.09.2007 was admittedly served on the petitioner and inventory of the goods available in the godown of the petitioner was also verified in the presence of ITCOT official and in terms of Rule 11 of the II Schedule of the Income Tax Act, 1961 - person for recovery of tax [under Section 222 and 276 of the Income Tax Act, 1961], it was open to the petitioner to raise any claim and in that event, the Tax Recovery Officer can investigate the claim or objection and admittedly, the petitioner did not do so. It is further pointed out by the learned Senior counsel that M/s.Karware Impex made a request for release of the goods stored in the petitioner's godown and the petitioner sent a communication dated 06.10.2007 to the Additional Director of DRI, Chennai, enclosing the copy of the adjudication passed by the Commissioner of Customs [Export], Seaport, Chennai and on the said letter, an endorsement was made by stating that 'on phone Mr.Sinha enquired. I have stated that in the absence of OIO concerned [which is yet to be received by DRI], this office cannot comment on the release' and even as per the averment of the petitioner, based on the oral

instructions only, he released the goods in favour of M/s.Karware Impex and despite aware of the subsistence of the Order of Attachment, the petitioner failed to seek any clarification from the 2nd respondent - Bank and on becoming aware of the same, the 2nd respondent - Bank, immediately sent a letter dated 09.10.2007 to DRI, pointing out that the attachment of stock by Recovery Officer of DRT-II, Chennai was also intimated to them by the petitioner during September 2007 and therefore, requested the said Authority for restoration of the status quo in the said matter.

(6) It is the further submission of the learned Senior counsel appearing for the respondents that the 2nd respondent - Bank had filed IA.Nos.798 and 799 of 2007 in OA.No.51 of 2005 before DRT-II at Chennai, praying for maintenance of status quo as on the date of attachment on 06.09.2007 as well as appropriate proceedings for disobeying the Order of Attachment and DRT-II, Chennai, vide order dated 10.04.2008, had castigated the acts of the respondents therein and ordered that DRI, Adjudication Officer, Commissioner of Customs as well as the petitioner herein, were declared as 'defendants in default' and they are also personally liable along with the petitioner herein. Challenge to the said order was made by DRI, M/s.Karware Impex as well as by the petitioner by filing Appeal Nos.4 to 8 of 2008 before DRT-II, Chennai. DRT-II, Chennai, vide common order dated 24.12.2009, had allowed the appeals filed by DRI and confirmed the orders of the Recovery Officer dated 10.04.2008 and challenging the said order, the petitioner filed an appeal and initially, stay was granted and the said appeal itself came to be dismissed for default along with the petition for stay vide order dated 03.07.2013. It is further submitted by the learned Senior counsel that challenging the said order, the petitioner filed WP.No.2645 of 2019 before the Hon'ble First Bench of this Court and it was also dismissed on 26.03.2019 and a further challenge to the said order made by the petitioner by filing SLP [C] No.16514 of 2019 before the Hon'ble Supreme Court of India, has also ended in dismissal and therefore, the above said order of DRT-II at Chennai, as confirmed by DRAT has become final and as such, it is not open to the petitioner to argue on the merits of the main matter. It is also the submission of the learned Senior counsel that as against the Order of Attachment, the petitioner is having an effective alternate remedy before DRT under Section 30 and 30A of RDDB Act [Amended], wherein, the points urged by the petitioner can also be gone into and hence, prays for dismissal of this writ petition with cost.

(7) In support of his contentions, the learned senior counsel appearing for the respondents placed reliance upon the following judgments:-

A) 2003 [3] SCC 524 [Sadhana Lodh V. National Insurance Co.Ltd,, and Another] ;

- C) 2010 [6] SCC 193 [Eureka Forbers V. Allahabad Bank and others] ;
- D) 2010 [8] SCC 110 [United Bank of India V. Satyawati Tondon and Others] ;
- E) 2011 [14] SCC 337 [Nivedita Sharma V. Cellular Operations Association of India and others].
- (8) Mr. Vijay Narayan, learned Senior counsel appearing for the writ petitioner, in response to the said submission, by way of reply, would submit that as regards the delegation of power to the Recovery Officer by DRT, no arguments were advanced on behalf of the 2nd respondent and that apart, in the light of the judgment rendered by this Court in K.M. Adam's case reported in 70 Law Weekly 1016 [cited supra], the Cash Credit Account cannot be attached and that apart, the impugned Order of Attachment is also wholly barred by limitation and in the light of the infraction of the mandatory statutory provisions, it is not necessary on the part of the petitioner to avail the alternate remedy and prays for allowing of this writ petition. The learned Senior Counsel also placed reliance upon the judgments reported in [1] 2005 [7] SCC 791 [Harshad Chiman Lal Modi V. DLF Universal Ltd., and Another] ; and [2] 2007 [2] SCC 355 [Hasham Abbas Sayyad V. Usman Abbas Sayyad and Others].
- (9) The orders in this writ petition were reserved on 20.12.2019. This Court, after going through the materials, felt that the matter in issue requires further clarification and accordingly, listed the writ petition for further hearing on 07.01.2020 and on that date, heard the submissions of Mr. Vijay Narayan, learned Senior counsel appearing for the petitioner and Mr. Om Prakash, learned Senior counsel appearing for the respondents and reserved the orders.
- (10) The issues arise for consideration in this writ petition are:-
- A) Whether the Cash Credit Accounts maintained by the petitioner with the various branches of Bank of Baroda, viz., at Bangalore Main Branch, EC Street, Chennai-1, A5, Nehru Ground, Faridabad and Trichy Road, Coimbatore-5, are liable for attachment?
- B) Whether this writ petition is maintainable in the light of the availability of the alternate remedy under Section 30 of RDDB Act?
- (11) The following facts are not in dispute:-
- M/s. Karware Impex had availed loan facilities from the 2nd respondent - Bank / State Bank of India Overseas Branch, Chennai, and it created security upon immovable properties, stocks, raw materials, finished goods and other current assets etc., wherever else the same may be, including any such goods in the course of transit or delivery, Book debts, outstanding moneys, receivables etc.
- In terms of the Debt Recovery Certificate dated 31.01.2007 bearing DRC No.34/2007 in OA.No.51/2005, on the file of DRT-II at Chennai, an order of Attachment

dated 06.09.2007 came to be passed by the Recovery Officer.

- ➔ M/s.Karware Impex had imported Stainless Steel sheets and Coils, grade-AISI 304, under Duty Exemption Entertained Scheme [DEEC Scheme] for utilization and discharge of their export obligations and it also availed loan facilities from the 2nd respondent - Bank.
- ➔ The Directorate of Revenue Intelligence [DRI] had seized 119 Stainless Steel sheets and 79 coils on 19.01.2005 and the DRI had entrusted the custody of the seized goods to the petitioner herein on their behalf.
- ➔ The petitioner herein made repeated requests to DRI to have the goods entrusted to them, citing inconvenience and causing obstacles.
- ➔ The Additional Director General of DRI issued a Show Cause Notice to the original borrower, viz., M/s.Karware Impex, alleging illegal diversion of imported goods, viz., Stainless Steel sheets.
- ➔ The 2nd respondent-Bank filed OA.No.51/2005 on the file of DRT-II at Chennai, praying for issuance of a Recovery Certificate against M/s.Karware Impex and Thiru.V.Subhramaniyam and it was ordered

on 14.12.2006 for a sum of Rs.4,94,65,936.65p. with subsequent interest and cost and in case of default, granted liberty to the 2nd respondent - Bank to sell the mortgaged/hypothecated properties mentioned in Schedule A, B1, B2 and B3 and adjust the sale proceeds towards the amount due.

- ➔ In the Schedule given in the final order in OA.No.51/2005, the goods seized by DRI and entrusted to the petitioner, did not find a mention and the petitioner is not a party for the reason that he is neither a borrower nor a guarantor.
- ➔ The Recovery Certificate in DRC.No.3/2007 issued against M/s.Karware Impex and Mr.V.Subhramaiyam to pay a sum of Rs.6,15,50,144.08p., comprising of principal, interest and cost, in default, liberty to sell the above mentioned properties and once again in the Recovery Certificate, the goods entrusted by DRI in the custody of the petitioner, have not been mentioned.
- ➔ The Recovery Officer, DRT-II at Chennai, passed an order of Attachment on 06.09.2007, forbearing M/s.Karware Impex and Thiru V.Subhramaniam, from dealing with the goods mentioned in the order and the petitioner herein was not a party and for the first time, in the said order, item No.6 speaks about the stocks, raw materials, finished goods and all other current assets etc., wherever else, the same may be found place.
- ➔ The Commissioner of Customs [Seaport-Export], Chennai, in the order dated 03.10.2007, in respect of adjudication proceedings initiated under the provisions of the Customs Act, held that M/s.Karware Impex had validly imported the raw material under the three

advance licences issued by JDJFT and granted sufficient time to manufacture and export the goods and the raw material was physically available to enable them to fulfill the export obligation within the time prescribed legal time stipulated in the Advance Licence read with Customs Notification and further found that no case of diversion of raw material has been made out. Accordingly, the proceedings initiated against M/s.Karware Impex, vide Show Cause Notice dated 27.05.2005 has been dropped by DRI. M/s.Karware Impex has sent a communication dated 05.10.2007 to the petitioner to release the goods on account of the dropping of the proceedings initiated by the Adjudicating Authority.

- ➔ The petitioner sent a communication dated 09.10.2007 to the Additional Director of DRI, Chennai-17, as to the request made by M/s.Karware Impex and in the said letter, the Section Officer has made an endorsement among other things that in the absence of OIO concerned, which is yet to be received by DRI, this office cannot comment on the request.
- ➔ The 2nd respondent - Bank sent a communication dated 09.10.2007 to DRI stating that the attachment of stock by the Recovery Officer of DRT-II at Chennai, has also been intimated to them by the petitioner in September 2007 and advised of the steps proposed to be initiated by DRI for restoration of the status quo in the matter.
- ➔ The 2nd respondent - Bank filed IA.Nos.798 and 799 of 2007 before DRT-II at Chennai, against [1] M/s.Karware Impex, [2] V.Subhramaniam, [3] DRI, [4] Adjudicating Officer, OIO.The Commissioner of Customs Adjudication Unit, Chennai-1 and [4] the petitioner herein. IA.No.798 of 2007 was filed praying to maintain the status quo on the date of attachment on 06.09.2007 by restoring forth with the stocks belonging to the 1st respondent and in case of failure to do so, to pay a sum of Rs.6,15,50,144.08p., being the value of the stocks and in IA.No.799/2007, the 2nd respondent - Bank prayed for appropriate action for disobeying the order of Attachment.
- ➔ The Recovery Officer, vide common order dated 10.04.2008 found that the order of Attachment was duly served by the Recovering Officer to the petitioner herein and was received by them on 06.09.2007 and the said order was also communicated to the Adjudication Officer on 11.09.2007 pointing out that Item No.6 pertains to the properties mentioned in the Order of Attachment.
- ➔ It was further found by the Recovery Officer that as per the Superathnama dated 21.04.2005 given by the petitioner, they specifically undertook not to remove, sell or dispose of or part with or otherwise deal with the said goods without prior permission in writing from them and despite that, between 03.10.2007 and 08.10.2007, goods entrusted to

them by DRI, have been released by the petitioner unauthorisedly or illegally on 06.10.2007.

- ➔ The Recovery Officer further found that respondents 3 to 5 in the said applications were aware of the Attachment Order and therefore, apart from them, rest of the respondents ought to have shown due care and concern and diligently complied with the Order of Attachment and in the light of section 28[10] of RDDB Act, the persons are liable to be declared as ''defendants in default'' and accordingly, disposed of the petitions.
- ➔ The Additional Director General of DRI, aggrieved by the said order, filed an Appeal in Appeal No.4/2008 ; the Commissioner of Customs, preferred Appeal No.5/2008 ; the petitioner herein filed Appeal No.6/2008 ; and M/s.Karware Impex and Thiru V.Subhramaniyam filed Appeal Nos.7 and 8/2008 respectively before the DRT-II at Chennai and vide common order dated 24.12.2009, DRT-II at Chennai, exonerated DRI and the Commissioner of Customs and having found that despite the petitioner being aware of the Order of Attachment, had released the goods in favour of M/s.Karware Impex, dismissed the Appeals filed by the petitioner, M/s.Karware Impex and Thiru.V.Subhramaniyam in Appeal Nos.6, 7 & 8/2008 and allowed the appeals filed by DRI and the Commissioner of Customs in Appeal Nos.4 and 5/2008.
- ➔ The petitioner, aggrieved by the dismissal of their Appeal, filed an Appeal before the Debts Recovery Appellate Tribunal and it was entertained and interim order was granted.
- ➔ According to the petitioner, there was a change in the Management and pendency of MA.No.265/2010 in the appeal on the file of DRAT, has not been brought to the knowledge and that apart, the concerned employee who was looking after the case, had also left their service on 31.05.2013.M.A.No.265/2010 and IA.No.608/2010 in the said appeal was dismissed for default on 03.07.2013 and according to the petitioner, no communication to that effect, has been received by them.
- ➔ The petitioner received Notice dated 23.11.2018 demanding a sum of Rs.31 Crores, failing which, Insolvency proceedings would be initiated and the petitioner filed IA.No.2/2018 in MA.No.265/2010 for condonation of delay of 1970 days in filing the appeal as well as other applications to set aside the order dismissing the appeal for default and to restore IA.No.608/2010 in MA.No.265/2010. In the interregnum, the 2nd respondent - Bank filed an application for initiation of corporate insolvency resolution process under the Insolvency and Bankruptcy Code and the same came to be dismissed for the reason that the 2nd respondent - Bank is neither operational nor financial creditor.
- ➔ DRAT, vide order dated 03.01.2019, dismissed the application for condonation of delay and as a

consequence, dismissed the other applications also.

- ➔ The petitioner filed WP.No.2645/2019 challenging the said order and it was entertained. A Division Bench of this Court, vide order dated 26.03.2019, has dismissed the writ petition. The petitioner, aggrieved by the said order, filed SLP [Civil] No.16514/2019 and it was also dismissed on 22.07.2019.
- ➔ Therefore, the order of DRT-II at Chennai, declaring the petitioner as a defendant in default, came to be confirmed and as such, it is not open to the petitioner to reopen the said decision in this writ petition.

- (12) The learned Senior counsel appearing for the petitioner would submit that the 2nd respondent - Bank filed IA.Nos.798 and 799/2007 before DRT-II at Chennai, and the said Tribunal, in turn, cannot delegate their function to the Recovery Officer to consider and dispose of the said applications and therefore, the order dated 10.04.2008 passed by the Recovery Officer in allowing the applications in IA.Nos.798 and 799/2007, is per se unsustainable in law.
- (13) As already pointed out, the legality of the said order put to challenge by the petitioner in Appeal No.6/2008 before DRAT at Chennai and it was dismissed on 24.12.2009 along with Appeal Nos.7 and 8/2008 filed by M/s.Karware Impex and Tr.V.Subhramaniyam and the challenge made by the petitioner in the appeal also came to be dismissed for default.
- (14) The applications filed by the petitioner herein for condonation of delay in restoring the same, also came to be dismissed and the challenge made by the petitioner by filing writ petition, also ended in dismissal, so also the Special Leave Petition.
- (15) Once the Recovery Certificate is issued by the Presiding Officer in exercise of powers under Section 19[22] of RDDB Act and it is sent for execution to the Recovery Officer in terms of Chapter No.V, recovery detriment by the Tribunal vests with the Recovery Officer and as such, the submission made by the learned Senior Counsel appearing for the petitioner that DRT-II at Chennai, itself ought to have disposed of IA.Nos.798 and 799/2007, in the considered opinion of the Court, cannot be accepted and that apart, the challenge made to the said order had also reached finality.
- (16) The primordial submission made by the learned Senior Counsel for the petitioner by attacking the impugned order is that the Cash Credit Account cannot be the subject matter of attachment by the Recovery Officer.
- (17) In AIR 1990 SC 1879 [Raneegunj Coal Association Ltd., and another Vs. Union of India and Others], the Hon'ble Supreme Court of India has issued a direction to deposit certain amount in Cash Credit Account of the writ petitioners therein and dealt with the issue whether interest is payable in lieu of the said deposit. The Hon'ble Apex Court had taken into consideration page No.115 of the Book of Instructions on Loans and observed that 'the Cash Credit Account is a drawing account against credit guarantee

granted by the Bank and is operated in exactly the same way as a Current Account, on which, an overdraft has been sanctioned. There can, therefore, be no doubt that a Cash Credit Account is in the nature of a Current Account and no interest is payable in this account.'

(18) The learned Senior counsel appearing for the petitioner has also invited the attention of this Court to the decision rendered by a Single Bench of this Court reported in 70 Law Weekly 1016 [K.M. Adam V. The Income Tax Officer, 2nd Additional II Circle, Madras]. The facts of the case would disclose that a Garnishee Order was issued against the Bank in respect of the Overdraft facility and it is relevant to extract the observations/findings, which are as follows:-

'',,,,In my judgment, when a Bank lends money on overdraft and the customer is always in debit there is no stage at which the Bank is a debtor to its customer, nor and point of time at which it holds any money of his on his account. S.46[5-A] of the Act cannot on any construction be intended as a credit-freeze, with this feature superadded, that if there was any thawing, the resultant credit released became immediately payable to the Department. Of course, if at any stage the account of the customer is in credit. S.46 [5-A] would come into play and the sum so standing to the credit of the assessee might be directed to be paid over. The present is not such a case and this undoubted right of the department is not what is now sought to be asserted. What the impugned order of the Income Tax Officer directs is virtually that the bank should pay over to the department the difference between the limit of the overdraft allowed to the petitioner and the amount drawn by him up to the date of the notice under S.46[5-A]. This in my judgment is not within the scope of the provision and the order understood in the light of the letter dated 24th November 1955 is consequently beyond the jurisdiction of the respondent. The notice is accordingly set aside but this will not prevent the department from proceeding to recover the arrears of tax in a manner authorised by the law. The rule is to this extent made absolute. There will be no order as to costs.'

(19) In the decision reported in 2015 [16] Maharashtra Law Journal 152 [DB] [Hotel Paras Garden, Balapur and Another V. Central Bank of India, Balapur and Others], the scope of Rules 60 and 61 of Income Tax Act, 1961, II Schedule, vis-a-viz., RDB Act, came up for consideration. It is relevant

to extract paragraph No.19, which reads thus:-

"It is therefore, apparent that the provisions of Second Schedule of the Income Tax Act, 1961, need to be referred to. Second Schedule provides for recovery of tax - here recovery of debt. The Tax Recovery Officer has to serve upon the defaulter notice requiring said defaulter to pay amounts specified in a certificate for recovery. Here the Debt Recovery Officer therefore, has to serve such notice upon the debtor, after he receives the recovery certificate under section 19[22] of the 1993 Act. Said notice has to give defaulter time of 15 days from its receipt and the recovery officer has to intimate that otherwise steps to realize the amount would be taken in second schedule, as per Rule 3. No steps in execution of certificate can be taken until period of 15 days has elapsed. Rule 4 provides for mode of recovery and if the amount is not paid within a period of 15 days, the recovery officer can proceed to realize the amount by one or more of the modes prescribed therein. First one is by attachment and sale of debtors movable property. Second is, by attachment and sale of his immovable property. Third one is by arrest of debtor and his detention in prison, while the last one is by appointing a receiver for the management of defaulter's movable and immovable properties. Part-II of the Second Schedule is about attachment and sale of movable property. Part III is about attachment and sale of immovable property. In present matter we are concerned with the provisions of Part III."

and in paragraph No.24, the earlier decision rendered by the Division Bench of Bombay High Court reported in 2004[3] Maharashtra Law Journal 893 [Keshrimal Jivji Shah and Another Vs. Bank of Maharashtra and Others] was extracted and it is relevant to extract some portions of the said decision, viz., paragraph No.32:-

"32.....The Parliament does not make it mandatory nor compulsory for the recovery officer to apply the second and third Schedule of I.T.Act and 1962 Rules, advisedly because the Legislature has provided safeguards after investigation of claims and objections by recovery officer. This investigation can be challenged in Appeal under section 30 of the Act which has been substituted with effect from 17th January, 2000. Even proceedings in such

appeal are not final because section 20 of RDB Act provides for a further appeal by person aggrieved against any order made or deemed to have been made by a Tribunal under RDB Act. Such an appeal lies to the Debt Recovery Appellate Tribunal. To compel Banks of financial institutions to either institute or defend proceedings after all this before a Civil Court is defeating and frustrating the Legislative Intent completely. Investigation and adjudication cannot be endless. That apart, the remedy to approach this Court in appropriate cases by invoking its jurisdiction under Articles 226 and 227 of the Constitution of India is always available. Hence, question No.2, is answered in these terms that it is not obligatory to apply second and third schedule of I.T.Act. and 1962 Rules while investigating a claim of objection to attachment and sale during the course of execution of recovery certificate under RDB Act. We are supported in these conclusions by a Division Bench decision of A.P.High Court reported in AIR 2004 A.P.94.''

(20) In 2009 SCC Online Bom 1669 : 2010 [1] Bom Civil Reporter 873 [Hill Properties Ltd., V. Union Bank of India], the Bombay High Court considered the following questions :-

'1. Whether in view of the provisions of Section 29 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, read with Rules 11[1] and 11[6] of the Second schedule of the Income Tax Act, 1961, a person against whom an order is passed is entitled to institute a suit in a civil Court or whether the said order can only be challenged by way of an Appeal under section 30 of the Act?

2. Whether the provisions of Section 29 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, are only restricted to those cases in which the property of the judgment debtor is sought to be recovered in terms of Rule [4] of the second schedule of the Income Tax Act, 1961?

3. What is the remedy available to a party, who is not a party in proceedings before the Debts Recovery Tribunal, but, whose property has been declared by the Tribunal to be validly mortgaged in favour of a financial institution?

(21) In paragraph No.3, the Division Bench observed that it is not obligatory to comply II and III Schedule of Income Tax Act, 1961, while investigating the claim or objection to the

attachment and sale during the course of execution of the Recovery Certificate under RDB Act. In paragraph No.5, it is observed that 'the petitioner who claims title in the property can move the Tribunal by invoking its jurisdiction under Section 19[25], and in such cases, if a prima facie case is disclosed before the Tribunal, the Tribunal is bound to consider the application so moved and dispose it according to law, after giving an opportunity to all parties before it.' The Division Bench, after referring to the definition of 'Debt' under section 2[g], Sections 17, 18, 20, 29, 30 and 34 as well as Rule 11 of the Second Schedule of the Income Tax Rules and after referring to the decision of the Hon'ble Supreme Court of India reported in 2000 [4] SCC 406 [Allahabad Bank V. Canara Bank], in paragraph No.23 [ii], had observed that, 'the exclusive jurisdiction covers claims by third parties, as well and exclusively cannot be restricted to Banks/Financial Institutions and the Defendant to the Original Application [OA] filed before the DRT. A totally independent third party creditor whose claim has no nexus with the claim of the Bank/Financial Institution, is entitled to file objections before the Recovery Officer constituted under the RDB Act, because his claim potentially conflicts/impacts/affects the claim by the Bank/Financial Institutions.' The Division Bench, also considering the scope of Rule 11 of the Second Schedule of the Income Tax Act, and after referring the decision reported in 1998 [6] SCC 658 [Tax Recovery Officer-II, Sadar, Nagpur Vs. Gangadhar Vishwanath Ranade], in paragraph No.31, has observed that 'the Tax Recovery Officer had no power under Rule 11 of the Second Schedule to the Income Tax Act to declare as void, transfer of property effected by the respondent...' and in paragraph No.40 also observed that 'Under Rule 11 when a claim or objection is preferred by a third party to the attachment or sale of property, under Rule 11[6] the party against whom an order is passed may institute a Civil Suit.' and answered the questions referred to above, as follows:-

'44[i] Question No.1 would have to be answered in the affirmative. The remedy of an Appeal provided under Section 30 would not oust the jurisdiction of the Civil Court in entertaining a Civil Suit as provided under Rule 11[6] of the Second Schedule to the I.T.Act.

[ii] Question No.2 will have to be answered with a clarification. Section 29 incorporates Schedule II of I.T.Act into the RDB Act and provides another mode of recovery in terms of the certificate from the defaulter [judgment debtor]. However, third parties who have a right or interest to the property sought to be attached or sold can considering Rule 11 of the Second Schedule to the Income Tax Act file their

objections. With the above clarification the question is answered in the affirmative. [iii]Insofar as Question No.3 is concerned, the normal remedy of such a party could be to invoke the provisions of Rule 11 of the Second Schedule to the I.T.Act. It is also open to a third party aggrieved by a declaration in respect of a property in which such party claims a right or interest to apply under Section 19[25], if that provision is attracted.'

- (22)It is an admitted fact that the petitioner herein, is neither a borrower nor a guarantor and in the order passed in OA.No.51/2005, the Schedule in A and B, were not referred to the imported steel items, so also in the Recovery Certificate dated 31.01.2007 issued by DRT-II at Chennai. Only in the Order of Attachment dated 06.09.2007 issued by the Recovery Officer, item No.6 is shown as 'stocks, raw materials, finished goods of other current assets etc., wherever else may be found.'
- (23)However, it is to be noted at this juncture that the godown of the petitioner in which the custody of the articles entrusted by DRI was also identified by the Bank Officials and the officials of ITCOT and Mr.S.K.Sinha, has acknowledged the same on behalf of the petitioner Company and therefore, the petitioner was very well aware of the subsisting Order of Attachment and despite that, had released the goods in favour of M/s.Karware Impex pursuant to the order of Adjudication, dropping the proceedings against M/s.Karware Impex and also did not move the Recovery Officer for raising or modifying the Order of Attachment.
- (24)As already noted, the applications filed by the 2nd respondent - Bank in IA.Nos.798 and 799 of 2007, were put to challenge by the petitioner as well as by M/s.Karware Impex, before DRT-II at Chennai and it had ended in dismissal, so also the appeal, which came to be dismissed for default. The endeavour made by the petitioner herein to restore the same by filing condonation application and other applications, had also ended in dismissal. So also the writ petition challenging the said order and the Special Leave Petition, challenging the order passed in the writ petition.
- (25)Incidentally, a question also arise for consideration as to the scope of the Order of Attachment under Rule 11 of the Second Schedule to the Income Tax Rules. A Division Bench of Bombay High Court, in the decision reported in Volume 203 [1993] ITR 696 [Tushar Tulsidas Tanna V. J.Ram and Others], has observed as follows:

'It was contended for the Department that the petitioner had no such right as on the date of the attachment order, as the petitioner, for the first time, obtained interest in the property in question only in the year 1981, while the notice under rule 2 of the II Schedule was issued in December,

1976. The provisions of Rule 11 are substantially the same as the powers of an executing court under Order 21 Rule 58 of the Code of Civil Procedure Code [see in this connections, Gangadhar Vishwanath Ranade [No.2] V TRO [1989] 177 ITR 176 [Bom]]. This Court has, in Jagjivan Dhonidiram Kirad V. Gopal Vinayak Joshi, AIR 1955 Bom 397, taken the view that the right of objecting to an attachment is available not only to the person who had interest in the property at the date of attachment, but also to a subsequent purchaser who is entitled to show that his predecessor-in-title had a right of objection. We are, therefore, of the view that the petitioner did have a right to raise objection under rule 11. Considering the serious consequences which flow from an order of attachment and an order passed under rule 11 of the Second Schedule to the Income Tax Act, 1961, we are of the view that the petitioner ought to have been given a personal hearing and an opportunity to adduce such evidence as he desired in support of his objections. After thus giving him an opportunity, the Tax Recovery Officer ought to have ade a speaking order dealing with the various objections raised by the petitioner. Unfortunately, however, by taking a narrow view, the Tax Recovery Officer rejected the objections by his impugned letter dated March 30, 1987, without affording a personal hearing to the petitioner. On this ground alone, we are of the view that the petitioner is entitled to succeed. In view of the fact that the petition succeeds on this narrow ground alone, we are not considering or deciding the other contentions which were vehemently argued by Mr.Dastur, learned counsel for the petitioner."

- (26)A Single Bench of Calcutta High Court, in the decision reported in Volume 208 [1994] ITR 46 [Anandilal Goenka and Others V. Tax Recovery Officer and Others], has also considered the scope of Rule 11 of the Second Schedule to the Income Tax Act, 1961 and in page No.55, has observed that "the provisions of Rule 11 of the Second Schedule to the Income Tax Act, 1961, are analogous to Order 21 Rules, 58, 61 and 63 of the Code of Civil Procedure as they stood until Rule 58 was amended in the year 1976. The Tax Recovery Officer, acting under Rule 11 of the Second Schedule, must direct his investigation to possession. It is not open to him to go into complicated questions of title.

But, if in the course of such investigation as to who is in possession of the property attached, a question of some legal right, interest or title arises and if it affects the determination of the question as to who is the person really in possession, he can take such legal right, interest or title into account."

(27) Similar view is also taken by a Division Bench of Patna High Court, Ranchi Bench, in the decision reported in Volume 238 [1999] ITR 312 [State Bank of India V. Tax Recovery Officer and Others] wherein, it is observed in page Nos. 317 and 318 that, "in terms of provisions of the Code of Civil Procedure [Order 21 Rules 58 to 63 of CPC], a third party objecting to the attachment of the property, could either file a suit or prefer a claim before the Execution Court, which the Execution Court was required to decide albeit summarily, upon evidence, subject to the decision of the Court in the suit which could be preferred under Rule 63 against the said decision of the Executing Court on the claim."

(28) The impugned Order of Attachment which is the subject matter of challenge in this writ petition was passed by invoking Section 25[a], 28[3][i][iv], 28[3][x] of RDDB and FI Act, 1993, and Rule 31 of II Schedule of IT Act, 1961, in and by which, the attachment of 2 Cash Credit Accounts and 3 Current Accounts of the petitioner Company in various Branches of Bank of Baroda, came to be attached and according to the petitioner, they have not at all been put on notice and that apart, the Cash Credit Account cannot be attached.

(29) The learned Standing Counsel for the respondents has invited the attention of this Court to the decision of the Hon'ble Apex Court reported in 2010 [6] SCC 193 [Eureka Forbers V. Allahabad Bank and Others] and would submit that in paragraph No. 73, the Hon'ble Apex Court has observed that "the provisions of section 2[g] of RDDB Act have to be construed, so as to give it liberal meaning and the claim of the Bank relating to hypothecated goods was well within the jurisdiction of Tribunal exercising its powers under Section 17 of the Recovery Act." It is also argued by the learned Senior counsel that in the light of the effective alternate remedy available under Section 30 of the RDDB Act, the writ petition is not maintainable.

(30) The said submission on point of law, merits acceptance and however, whether the Cash Credit Account can be attached, is a debatable issue, in the light of the above cited decisions and that apart, the petitioner which is a running concern, would plead that on account of the ex parte order of Attachment, their Cash Credit Accounts operations are virtually crippled apart from taking the stand that the Cash Credit Account cannot be the subject matter of Attachment.

(31) In the light of the said legal plea, this Court is of the considered view that the petitioner is to be given an opportunity to file an application for raising the impugned Order of Attachment, with a further direction, directing the

1st respondent to consider and dispose of the said application on merits and in accordance with law.

(32) Insofar as the plea of alternate remedy is concerned, the impugned order of Attachment came to be passed without notice to the petitioner and in the light of the above cited decision and discussions, availability of the alternate remedy is not a bar and that apart, the petitioner is neither a borrower nor a guarantor, though he is a defendant in default. Hence, the writ petition is maintainable.

(33) In the result, the writ petition is disposed of and the petitioner is granted liberty to file an application before the 1st respondent for raising the impugned Order of Attachment within a period of three weeks from the date of receipt of a copy of this order and upon receipt of the application, and after putting the 2nd respondent - Bank on notice, the 1st respondent shall consider and dispose of the said application on merits and in accordance with law and pass appropriate orders within a further period of four weeks thereafter. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

AP
To

1. The Recovery Officer
Debt Recovery Tribunal-II
4th Floor, Spencer Tower,
770-A, 4th Floor, Anna Salai
Chennai, Tamil Nadu 600 002.

2. Assistant General Manager
State Bank of India
Overseas Branch, New No.86,
[Old No.21], Rajaji Salai,
Chennai 600 001.

3. The Manager
Bank of Baroda
Bangalore Main Branch, Kempe Gowda Road,
Prithvi Building, Bangalore 560 009.

+1cc to Mr. Anand Sasidharan, Advocate SR.No.4063

+1cc to Mr. K. Chandrasekaran, Advocate SR.No.4205

WP.NO.32285/2019

SV (CO)

<https://hcservices.courts.gov.in/hcservices/>
GMR (10/02/2020)