IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.25681 of 2018
and
W.M.P.Nos. 29863 & 29867 of 2018

S.Shanmugam ..Petitioner

vs

1. The Tax Recovery Officer, Central-I,
Office of the Tax Recovery Office,
Income Tax Department,
Room No.322, Third floor,
New No.46, Mahatma Gandhi Road,
Nungambakkam, Chennai- 600 034.

2. The Commissioner of Income Tax, Central -I,
Office of the Tax Recovery Office,
Income Tax Department,
Room No.322, Third floor,
New No.46, Mahatma Gandhi Road,
Nungambakkam, Chennai- 600 034.

3. The Sub-Registrar,
Konnur Sub-Registrar's Office,
Chennai- 600 049.

4. M/s.Maruthi Electrical Engineers,
Represented by its Proprietor
Mr.K.S.Thirumalaivasan,
B-5, Thiru-vi-ka Industrial Estate,
Guindy, Chennai- 600 032. .. Respondents

Prayer :

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in respect of the order Ref.No.TRC:22/CR-1/2013-14 dated 24.07.2017 passed by the first respondent and quash the same.

For Petitioner : Mr.N.Murali Kumaran

for M/s.T.V.Vineeth Kumar

For Respondents: Mr.A.P.Srinivas
Senior Standing Counsel for R1 and R2
Mr.V.Nanmaran
Government Advocate for R3
Paper publication proof filed -
no appearance for R4

O R D E R

The Order dated 24.07.2017, passed by the first respondent is sought to be quashed in the present writ petition.

2. The impugned order passed by the Tax Recovery Officer / first respondent reveals that in connection with the recovery proceedings in the case of Shri K.S.Thirumalaivasan, the attachment of the property belongs to him was recorded. Accordingly, the Sub-Registrar was requested to make entry in the records regarding the attachment of the property with the Income Tax Department and sent a copy of the Encumbrance Certificate to the Income Tax Office after making the required changes with respect to the attachment. The impugned order is a communication sent by the Income Tax Authority, Sub-Registrar, Konnur Sub-Registrar's Office, Chennai – 600 049. The said correspondence between the Income Tax Department and the Registration Department is sought to be quashed in the present writ petition by the writ petitioner who claims to be a bonafide purchaser of the property which is sought to be attached by the Income Tax Department.

3. The petitioner states that they are running a partnership firm by two partners namely S.Shanmugam and B.Rajendran. However, the writ petition is filed by one of the partner Mr.S.Shanmugam in his personal capacity. The petitioner is running a small scale industry and purchased the property viz., all that piece and parcel of land, factory and shed situated at Pattravakkam Village, Ambattur Industrial Estate, Ambattur Taluk, Thiruvallur District, comprised in Survey Nos.150 Part and 180 Part, being the Part of Plot No.250 (NP) mentioned as Plot No.250A, measuring to an extent of 5460 sq.ft land together with shed along with electricity points and included feet wide pathway along with shed measuring built up area Ground Floor 3000 sq.ft. RCC, First Floor 3000 sq.ft. RCC and Ground Floor ACC Sheet Roof 1050 sq.ft., with electricity connection A/c No.037-001-99 along with all deposits with 65 HP Industrial Power, within the Registration District of North Chennai and within the Sub-Registration District of Konnur. The Registered sale deed was executed on 28.02.2013 on the file of the Sub Registrar Office, Konnur.

4. The property belongs to Mr.K.S.Thirumalaivasan, who was running a company namely M/s.Maruthi Electrical Engineers. The petitioner negotiated with the said owner of the property and verified the original documents, obtained legal opinion and purchased property for a valuable sale consideration. The petitioner/Company availed loan from Indian Overseas Bank, Ambattur Industrial Estate, Ambattur, Chennai, who in turn also verified and sanctioned the loan. Thus, the petitioner is the bonafide purchaser of the property by paying valuable consideration.

5. The petitioner is in peaceful possession and enjoyment of the property, while so, it is brought to the notice of the petitioner that the Income Tax Authorities have taken steps to attach the property as the erstwhile owner of the property Mr.K.S.Thirumalaivasan, is the Income Tax defaulter. The petitioner verified the actions taken by the Income Tax Department and could able to secure the copy of the impugned order and filed the present writ petition.

6. The learned counsel for the petitioner mainly contended that the petitioner is a third party bonafide purchaser and no way connected with the Income Tax liability to be paid by the erstwhile owner Mr.K.S.Thirumalaivasan. Therefore, the rights of the petitioner is to be protected. If at all, the said K.S.Thirumalaivasan is the Income Tax defaulter, the Authorities ought to have initiated action prior to the purchase of the property by the petitioner and the petitioner admittedly purchased the property on 28.02.2013 and the interim order of attachment was passed by the first respondent on 24.07.2017 and therefore, the purchase of the property by the petitioner was well in advance and thus, the interest of the petitioner is to be protected.

7. The learned counsel for the petitioner reiterated that the petitioner is running an industry in the subject property and in the event of any further action, the petitioner will loose his livelihood. He paid a valuable consideration and purchased the property in the year 2013 and started an industry and running the same peacefully. Thus, in all respects the petitioner is a bonafide purchaser of the property from the seller, who is now claimed as a tax defaulter by the Income Tax Department. Thus, the writ petition is to be considered.

8. The learned counsel for the respondents relying on Section 281 of the Income Tax Act reiterated that the Income Tax Department is incompetent to declare the sale deed as null and void. The Competent Civil Court alone is empowered to issue any such declaration and therefore, the impugned communication is

untenable. Section 281 cannot be extended so as to declare the sale deed executed in favour of the petitioner by the seller is null and void. Thus, the impugned order requesting the Sub Registrar to create an encumbrance, is in violation of the provisions of the Transfer Property Act.

9. The learned counsel for the petitioner reiterated that the Courts have held that such a declaratory power is not vested on the Income Tax Authorities and thus, based on Section 281, the sale deed executed in favour of the petitioner cannot be nullified.

10. The learned Senior Standing Counsel objected the said contention by stating that Section 281, unambiguously stipulates that where, during the pendency of any proceedings under the Income Tax or after the completion thereof, but before the service of notice under Rule 2 of the second schedule, any assessee creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of, any of his assets in favour of any other person, such charge or transfer shall be void as against any claim in respect of any tax or any other person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding or otherwise.

11. However, it is contended that in respect of the facts and circumstances, an aggrieved person has to approach the Competent Authority under Schedule II Rule 11 of the Income Tax Act for investigation of the facts and circumstances. Schedule II Rule 11 provides investigation by the Tax Recovery Officer. Therefore, an investigation is required in order to ascertain the disputed facts and circumstances for the purpose of forming an opinion whether the particular case is falling under Section 281 of the Income Tax Act or not. Undoubtedly, the Competent Authority under the Income Tax Act is exercising the quasi judicial power and they are expected to be neutral and judicious, while deciding the facts and circumstances with reference to the documents and evidences to be produced by the parties.

12. This Court is of the considered opinion that the spirit of Section 281 of the Income Tax Act is that the declaration contemplated under Section 281 of the Act would be undoubtedly, binding on the assessee/Tax Defaulter and the Income Tax Department. If at all, any third person purchased a property the common principle that the 'purchaser beware' would be applicable on one hand and on the other hand such third party would get a right to prosecute the seller, who is the Tax Defaulter and sold the property to a third party by way of misrepresentation or in

a fraudulent manner. Any such fraudulent transaction or sale by way of misrepresentation or otherwise cannot have any binding effect as far as the Income Tax Department is concerned, since such transactions are made by the tax defaulters with the third party buyers. Whether there was an understanding between the parties or collusion or otherwise are the factors to be considered by the Competent Court of Law and not by the Authorities. Once, the Authorities initiated appropriate proceedings under the Act and when such proceedings are pending with reference to Section 281 of the Act then the assessee / tax defaulter is expected not to deal with the property in contravention to the provisions of the Act. If any such tax defaulter/assessee sells the property in favour of the third person without the knowledge of the Income Tax Department then such third party gets a right to prosecute the seller, who committed a act of fraud, misrepresentation or otherwise. However, in such third party transactions, the right of the Income Tax Authority under the provisions of the Act can never be taken out. Thus, the declaration under Section 281 cannot be treated as Universal. It is restricted only to the extent that the declaration would be binding on the tax defaulter/assessee and the Income Tax Department. If at all the properties further encumbered taken out of the Income Tax Department by the assessee, the said third party is entitled to prosecute the assesse/tax defaulter and in such circumstances, the right of the Income Tax Department to deal with such property cannot be taken away and in the event of meddling in such circumstances, the very spirit of the statute is not only diluted, the recovery of tax also will be prejudiced.

13. Under these circumstances, any person aggrieved gets an opportunity to adjudicate the disputed facts before the Competent Authority / Tax Recovery Officer under Schedule II Rule 11 of the Income Tax Act, to ascertain the facts and get an order, the aggrieved person is bound to approach such authority based on such facts and circumstances ascertained and based on the final order passed. If any fraudulent activities are committed or misrepresentations are made by the Assesse/Tax Defaulter, then parties aggrieved are empowered to proceed against the person who have committed a fraud or misrepresentation.

14. This being scope of the Income Tax Act, this Court is of an opinion that in the present case the first respondent/Tax Recovery Officer filed a counter stating as follows:

> "Recovery Proceedings were initiated for both the assessment years and were certified to the TRO-XVIII on 30.05.2012 and the TRO-XVIII has issued ITCP-1 in TR No.3/2012 dated 31.08.2012 and the same was duly

served on the assessee on 01.06.2012. ITCP-16 dated 18.08.2012 attaching the property situated at Door No.250A, SIDCO Industrial Estates, Ambattur on 17.08.2012 was served by post on 24.08.2012 to the Sub Registrar Konnur. The Sub Registrar Konnur vide his letter dated 27.08.2012 in No.225/2012 had requested for the full details of the property like Village Name, Survey Number, Area of the Property with the boundaries to make the necessary entry. This office vide letter dated 24.07.2017 requested the authority to forward a copy of the Encumbrance Certificate reflecting the attachment made by the Department. The Sub Registrar has made the entry as on 24.07.2017 after the receipt of this office letter dated 24.07.2017. It may also be noted that attachment notice was served on the Vendor Shri K.S.Thirumalaivasan on 24.08.2012 and a copy of the attachment notice was affixed on the subject property on 17.08.2012 and Panchanama is there."

15. The issues raised in these writ petitions are elaborately considered by this Court in W.P.No.15437 of 2014, dated 19.07.2021 and the relevant paragraphs are extracted hereunder:

"30.Let us now consider the scope of Section 281 of the Income Tax Act. Chapter XXIII Section 281 of the Income Tax Act contemplates certain transfers to be void. Sub~clause (1) enumerates that ?where, during the pendency of any proceeding under this Act or after the completion thereof, but before the service of notice under rule 2 of the Second Schedule, any assessee creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of, any of his assets in favour of any other person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding or otherwise". A close reading of the above provision would reveal that where during the pendency of any proceedings under this Act or after the completion thereof, but before service of notice under rule 2 of the Second Schedule, if any charge is created by an assessee in favour of any other person shall be void as against any claim in respect of any tax or any other some payable by the assessee. Therefore, it is unambiguous that, during pendency of the proceedings if any charge is created, then such charge created by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever shall be void.

31.Schedule II Rule 11 of the Income Tax Act which contemplates investigation by Tax Recovery Officer. Sub~Clause (1) to Rule 11 states that “where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection‟.

32.Sub~clauses (5) and (6) to Rule 11 of the Income Tax Act reads as under:

> (5) Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.
>
> (6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute; but, subject, to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive.

33.A perusal of the entire Rule would reveal that it is not an appeal or Revision. It is an investigation by the Tax Recovery Officer, which is contemplated. Therefore, any third person if involved in such transfer of property, which is declared as void under Section 281 of the Income Tax Act may submit an application for investigation by Tax Recovery Officer. Therefore, the statute does not assume that every third person is liable under the Income Tax Act. Schedule II Rule 11 of the Income Tax Act is a beneficial provision in respect of the person, who was otherwise cheated by any of the defaulter of tax arrears, who in turn can submit an application for further investigation in order to cull out the truth or genuinity with reference to the transactions or transfers. Therefore, the Tax Recovery Officer during the pendency found that the charge created in favour of the petitioner Bank is valid, then he can pass appropriate orders withdrawing the attachment made under the provisions of the Act. If the Tax Recovery Officer is of an opinion that the attachment made under the provisions of the Act was prior to the mortgage or otherwise, then he can pass appropriate orders confirming the attachment. However, the said Rule is not relatable to declaration or in the form of an appeal by any third person. It is only an enabling provision for effective adjudication of the actual facts and to find out the genuinity of certain transfers made during the pendency of the Income tax proceedings and with reference to the provision under Section 281 of the Income Tax Act.

34.Looking into the provisions of the SARFAESI Act, more specifically, Section 26E, which contemplates priority to secured creditors which reads that “notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any Secured Creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government of State Government or local authority”.

35.Let us now consider Section 31B of the Recovery of Debts and Bunkruptcy Act, 1993 and the said section Section 31B was inserted by Act 44 of 2016 with effect from 01.09.2016. The said provision also deals with priority to secured creditors, which reads that “notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority“.

36.It is necessary to consider the conflicting provisions of the Income Tax Act, SARFAESI Act and Recovery of Debts and Bunkruptcy Act, 1993.

37.On the one hand, the Income Tax Act states that, where during the pendency of any proceedings under the Income Tax Act or after completion thereof, any assessee creates a charge on or parts with the possession by way of mortgage, sale, etc. Shall be void against any claim in respect of any tax. So also, the SARFAESI Act states that Section 26E contemplates that the secured creditors shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government of State Government or local authority. Therefore, equal weightage is given in respect of the secured creditors. So also Section 31B of Recovery of Debts and Bunkruptcy Act, 1993 states that sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.

38.Thus, conflicting provisions in these three independent statutes are creating heart burning issues between the secured creditors as well as the Tax Department. Some of the decisions are in favour of the Tax Department and some of the decisions are in favour of the Banks. With reference to Section 26E of the SARFAESI Act and Section 31B of the Recovery of Debts and Bankruptcy Act, 1993, judgments are given in favour of the Banks in view of the fact that the said provisions contemplates priority over the Government dues is to be given to the Banks. The tenor of Section 281 of the Income Tax Act which contemplates that any such transaction made during the pendency of any proceedings under the Income Tax Act shall be void. Thus, the understanding would be that if the proceedings under the Income Tax Act are pending at the time of creating mortgage, sale, gift, etc., then Section 281 of the Income Tax Act would be pressed into operation. The next question is at the time of creation of mortgage, sale, gift etc., the Income Tax Proceedings are pending as contemplated under Section 281 of the Income Tax Act, such transactions became void. Thus, it is unambiguous that the transactions or transfers made during the pendency of the Income tax proceedings are void. This being the purposive interpretation to be adopted, all transfers, mortgages etc., made during the pendency of the Income tax proceedings shall became void under Section 281 of the Income Tax Act. Once Section 281 of the Income Tax Act was pressed into service and the transactions or transfers became void, any mortgage, transfer etc., thereafter would be of no validity. In other words, the transfer or transactions made against the void transactions under the Income Tax Act are invalid in the eye of law. Therefore, even before invoking the provisions of the SARFAESI Act and DRT Act, Section

281 of the Income Tax Act intervenes and declares the transactions or transfers as void, if any such transactions or transfers are made during the pendency of the Income Tax proceedings. In such circumstances, invoking the provisions of the SARFAESI Act or DRT Act for the purpose of claiming priority would not arise at all. Law expects that the parties to be prudent and careful. Before mortgage, transfer or transactions, an enquiry is required by the respective parties as the buyer must beware (caveat emptor) of the encumbrances or the statutory implications or the genuinity of the title etc., Thus, the principles of caveat emptor would be applicable in such circumstances, where a transactions or transfers are made during the pendency of the Income tax proceedings. In such cases, the Income tax proceedings are known only to the tax defaulter and not to the third party purchaser or the mortgagee Bank or otherwise. Thus, the void transfers or transactions made during the pendency of the Income tax proceedings cannot be the subject matter for any mortgage or further transfers or transactions etc., This being the possible perceptions, the Courts are bound to consider, which transaction will prevail over and which Act would be applicable with reference to the facts and circumstances.

39.More elaborately the facts at the first instance to be considered and then the application of law which is to be applied at the first instance also to be considered. For instance in the case where the income tax proceedings are pending under the Income Tax Act and if a mortgage is entered into by the tax defaulter with any Bank, then it is the duty of the Bank to ensure that no other proceedings are pending and it is the duty of the person who is borrowing loan to inform the same to the Bankers. Under these circumstances, the Income Tax Department is alien to the transaction of mortgage between the bank and the tax defaulter and therefore, the Act will automatically come to the rescue of the Income Tax Department declaring such transfers as void under Section 281 of the Income Tax Act.

40.Where the Bank entered into a mortgage well before the pendency of proceedings under the Income Tax Act, then Section 26E of the SARFAESI Act would be applicable and in such circumstances, the Bank will hold priority over all other claim including the Government dues. Even in such circumstances, this Court has to consider the other principles which all are to be followed in such cases. Admittedly, the SARFAESI Act and Recovery of Debts and Bunkruptcy Act, 1993 provides priority to the secured creditors and the Income Tax Act provides priority to the tax arrears to be recovered. Under these circumstances, this Court is inclined to consider the common law Doctrine of priority of crown debts.

41.The ?doctrine of constitutional priority? will have precedence over the other priorities. If the priority clause is provided under various enactments, the question arises as to which priority is to be held precedence over the other priorities. The test of traceability and recognition under the constitutional provisions would be the proper procedure to form an opinion.

42.In the present scenario, the SARFAESI Act and the DRT Act provides priority to secured creditors, i.e. the banks hold priority. The Income Tax Act contemplates any such mortgage or sale during the pendency of any proceedings under the Income Tax Act shall be void. Thus, this Court has to test the supremacy on the basis of the constitutional recognition, which is supreme than the statutes enacted under the constitution. The taxation laws are constitutionally recognised with reference to the sovereignty and the policies of the Government. Thus the supremacy of the Constitution overtakes the statutes enacted and such enactments constitutionally recognised directly takes precedence over the other statutes.

43.The principles of -doctrine of constitutional priority- is to be defined as, in the event of the similar provisions of priority under various enactments, then the statute which is recognised directly by the Constitution for the purpose of upholding the sovereignty and integrity of the Nation is to be considered as holding precedence over the other statutes providing priority.

44.The Constitutional Bench of the Hon-ble Supreme Court of India in the case of Builders Supply Corporation vs. Union of India [1965 AIR 1061] considered the principles laid down in the case of Kaka Mohamed Ghouse Sahib and Co. vs. United Commercial Syndicate and others [(1886) ILR 7 Mad. 434], wherein the Madras High Court has held that it is a settled principle of constitutional law that as between creditors of the same rank the Government is entitled to priority and the republican character of the Constitution of India has not abrogated this general doctrine of priority of State debts. In dealing with this question, Justice Ramamurti has referred to the relevant decisions in relation to the arrears of income tax due to the Government and has pointed out there is a consensus of judicial opinion on the question that the arrears of tax due to the State can claim priority over private debts. This position has not been seriously disputed.

45.Similarly, the basic justification for the claim of priority made by the Income Tax Department in the present case rests on the well recognised principle that the State is entitled to raise money by taxation, because unless adequate revenue is received by the State, it would not be able to function as sovereign Government at all. It is essential that as a sovereign the Sate should be able to discharge its primary governmental functions and in order to able to discharge such functions efficiently, it must be in possession of necessary funds and this consideration emphasises the necessity and the wisdom of conceding to the State, the right to claim priority in respect of its tax dues.

46.In this context, Part XII of the Constitution of India, more specifically, Article 265 which states that tax not to be imposed save by authority of law; Article 266 speaks about Consolidated funds and public accounts of India and the States; Article 267 states Contingency fund; Article 268 states Duties levied by the Union but collected and appropriated by the States; Article 268A denotes service tax levied by Union and collected and appropriated by the Union and the States; Article 269 states taxes levied and collected by the Union but assigned to the States; Article 269A denotes levy and collection of goods and service tax in course of inter~state trade or commerce and Article 270 states that taxes levied and distributed between the Union and the States. The chapter deals with the taxes and its constitutional importance are to be considered by this Court. Undoubtedly, tax is the backbone of our Nation-s economy and it holds top priority. In this context, the tax collected goes to the welfare of the people in general, however the mortgage or sale transaction between the bank and the tax defaulter can be at no circumstances be compared with the constitutional importance of tax being collected from the people for the purpose of achieving the constitutional goals and perspectives. Therefore, the provisions of various Acts if there are conflicting provisions or grant of priority to various institutions, then the Constitution of India will be the guiding factor to form an opinion and confer priority. The nature of transaction, the implications, Constitutional importance and the other principles enunciated under the Constitution of India are the principal factors to be considered to form an opinion that, which claim shall be given priority over the other claims as various statutes enacted by the Parliament gives priority to such institutions irrespective of the fact that the other Acts are also providing similar priority to other institutions.

47.In support of the said observation, this Court would like to draw the attention with reference to the judgment of the Three Judges Bench of the Hon-ble Supreme Court of India in the case of Central Bank of India vs. State of Kerala and others [Civil Appeal No.95 of 2005 dated 27.02.2009], wherein the Apex Court considered the provisions of the DRT Act and SARFAESI Act and the following observations are made:

> ?33.The non obstante clauses contained in Section 34(1) of the DRT Act and Section 35 of the Securitisation Act give overriding effect to the provisions of those Acts only if there is anything inconsistent contained in any other law or instrument having effect by virtue of any other law. In other words, if there is no provision in the other enactments which are inconsistent with the DRT Act or Securitisation Act, the provisions contained in those Acts cannot override other legislations. Section 38C of the Bombay Act and Section 26B of the Kerala Act also contain non obstante clauses and give statutory recognition to the priority of State-s charge over other debts, which was recognized by Indian High Courts even before 1950. In other words, these sections and similar provisions contained in other State legislations not only create first charge on the property of the dealer or any other person liable to pay sales tax, etc. but also give them overriding effect over other laws. In Builders Supply Corporation v. Union of India [(1965) 2 SCR 289], the Constitution Bench considered the

question whether tax payable to the Union of India has priority over other debts. After making a reference to the judgments of the Bombay High Court in Bank of India v. John Bowman and Ors., [AIR 1955 Bom. 305], Madras High Court in Kaka Mohammad Ghouse Sahib & Co. v. United Commercial Syndicate and others [(1963) 49 I.T.R. 25] and Manickam Chettiar v. Income~tax Officer, Madura, [(1938) 6 ITR 180], the Court held :

(i) "The Common Law doctrine of the priority of Crown debts had a wide sweep but the question in the present appeal was the narrow one whether the Union of India was entitled to claim that the recovery of the amount of tax due to it from a citizen must take precedence and priority over unsecured debts due from the said citizen to his other private creditors. The weight of authority in India was strongly in support of the priority of tax dues.

(ii) The Common Law doctrine on which the Union of India based its claim in the present proceedings had been applied and upheld in that part of India which was known as `British India- prior to the Constitution.

The rules of Common Law relating to substantive rights which had been adopted by this country and enforced by judicial decisions, amount to `law in force- in the territory of India at the relevant time within the meaning of Art. 372(1). In that view of the matter, the contention of the appellant that after the Constitution was adopted the position of the Union of India in regard to its claim for priority in the present proceedings had been alerted could not be upheld.

(iii) The basic justification for the claim for priority of Government debts rests on the well~recognised principle that the State is entitled to raise money by taxation, otherwise it will not be able to function as a sovereign government at all. This consideration emphasizes the necessity and wisdom of conceding to the State the right to claim priority in respect of its tax dues."

34. In State Bank of Bikaner and Jaipur v. National Iron and Steel Rolling Corporation and others [(1995) 2 SCC 19], the Court again

recognized the priority of the State-s statutory first charge under Section 11~AAAA of the Rajasthan Sales Tax Act, 1954 vis~`~vis claim of the bank to recover its dues from the borrower.

35. In Dena Bank v. Bhikhabhai Prabhudas Parekh & Co. and others [(2000) 5 SCC 694], the Court reviewed case law on the subject and observed:

"The principle of priority of government debts is founded on the rule of necessity and of public policy. The basic justification for the claim for priority of State debts rests on the well~recognised principle that the State is entitled to raise money by taxation because unless adequate revenue is received by the State, it would not be able to function as a sovereign Government at all. It is essential that as a sovereign, the State should be able to discharge its primary governmental functions and in order to be able to discharge such functions efficiently, it must be in possession of necessary funds and this consideration emphasises the necessity and the wisdom of conceding to the State, the right to claim priority in respect of its tax dues (see Builders Supply Corpn.). In the same case the Constitution Bench has noticed a consensus of judicial opinion that the arrears of tax due to the State can claim priority over private debts and that this rule of common law amounts to law in force in the territory of British India at the relevant time within the meaning of Article 372(1) of the Constitution of India and therefore continues to be in force thereafter. On the very principle on which the rule is founded, the priority would be available only to such debts as are incurred by the subjects of the Crown by reference to the State-s sovereign power of compulsory exaction and would not extend to charges for commercial services or obligation incurred by the subjects to the State pursuant to commercial transactions. Having reviewed the available judicial pronouncements their Lordships have summed up the law as under:

1. There is a consensus of judicial opinion that the arrears of tax due to the State can claim priority over private debts.

2. The common law doctrine about priority

of Crown debts which was recognised by Indian High Courts prior to 1950 constitutes "law in force" within the meaning of Article 372 (1) and continues to be in force.

1. The basic justification for the claim for priority of State debts is the rule of necessity and the wisdom of conceding to the State the right to claim priority in respect of its tax dues.
2.

4. The doctrine may not apply in respect of debts due to the State if they are contracted by citizens in relation to commercial activities which may be undertaken by the State for achieving socio~economic good. In other words, where the welfare State enters into commercial fields which cannot be regarded as an essential and integral part of the basic government functions of the State and seeks to recover debts from its debtors arising out of such commercial activities the applicability of the doctrine of priority shall be open for consideration."

48.One of the principles, which is impressive in the judgment cited supra is that the basic justification for the claim for priority of Government dues rests on the well recognized principles that the State is entitled to raise money by taxation otherwise it will not be able to function as sovereign Government at all. This consideration emphasises the necessity and wisdom of conceding to the State, the right to claim priority in respect of its tax dues. The importance of the above reading is to be considered regarding the present facts and circumstances."

16. It is made clear that in the event of filing any such application by the aggrieved person under Schedule II Rule 11, the Authorities Competent are bound to adjudicate the facts and circumstances independently and uninfluenced by the findings or the pleadings made by the parties before the Court of Law. When the Act provides an opportunity to an aggrieved person to conduct an investigation and in the present case by the Tax Recovery Officer then Authorities Competent are bound to consider the facts independently based on the documents and evidences to be produced by the respective parties.

17. Beyond the remedy available for the petitioner under Schedule II Rule 11 of the Income Tax Act, if at all the petitioner is further aggrieved or having cause against the

seller of the property, then the petitioner has to approach the Competent Court of Law for appropriate remedy and redressal of his grievances as the petitioner claims that he purchased the property for a valuable consideration. Thus, it is not as if the petitioner has no other remedy against the seller. In the event of any misrepresentation, fraudulent activities or otherwise is established against the seller, then the petitioner is entitled to get a remedy in the manner known to law.

18. Tax being the State Revenue, it is of paramount importance for the Authorities to recover the tax dues from the defaulters by following the procedures as contemplated. This apart, the Income Tax Department gives powers to the authorities to recover the tax arrears. This being the factum, the remedy available to the petitioner both under the Income Tax Act and under the General Law cannot prevent the Income Tax authorities from recovery of the tax dues by following the procedures as contemplated under the Income Tax Act.

18. Under these circumstances, this Court is of an opinion that the petitioner has to approach the Competent Authority under Schedule II Rule 11 of the Income Tax Act for adjudicating the issues on merits.

19. Thus, this Court is inclined to pass the following the orders:

> "(i) The relief as such sought for in the present writ petition stands rejected.
>
> (ii) The petitioner is at liberty to approach the appellate authorities as contemplated under the provisions of the TNVAT Act, 2006, by filing an appropriate appeal. In the event of filing any such appeal, the said appeal is to be entertained without reference to the ground of delay in filing and entertain the appeal, dispose of the same on merits and in accordance with law, by affording opportunity to all the parties. Such exercise is directed to be done as expeditiously as possible."

20. With these directions, the writ petition stands disposed of. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

Pns

To

1.The Tax Recovery Officer, Central-I,
Office of the Tax Recovery Office,
Income Tax Department,
Room No.322, Third floor,
New No.46, Mahatma Gandhi Road,
Nungambakkam, Chennai- 600 034.

2.The Commissioner of Income Tax, Central -I,
Office of the Tax Recovery Office,
Income Tax Department,
Room No.322, Third floor,
New No.46, Mahatma Gandhi Road,
Nungambakkam, Chennai- 600 034.

3.The Sub-Registrar,
Konnur Sub-Registrar's Office,
Chennai- 600 049.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.47371
+1cc to the Government Pleader, S.R.No.47528

W.P.No.25681 of 2018
and
W.M.P.Nos. 29863 & 29867 of 2018

SS(CO)
CB(26/10/2021)