IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.Nos.19742, 25082 & 4542 of 2021, 365 of 2022
and 267, 9336, 179, 1785 & 14596 of 2023

[W.P.No.19742 of 2021]

Indian Overseas Bank
Asset Recovery Management Branch
Rep. by its Chief Manager
Central Office, Annexe Building, Third Floor
763, Anna Salai, Chennai – 600 002. .. Petitioner

Vs.

The Assistant Commissioner
(Commercial Ta, Cuddalore Town)
St.Joseph's School Road
Mangakuppam, Cuddalore – 607 001. .. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari, calling for the records of the respondent in Na.Ka.No.A3/1048/2014 dated 10.08.2021 and quash the same as being illegal and against the provisions of law as per the judgment dated 10.11.2016 in W.P.No.2675 of 2011 passed by the Full Bench of this Court.

For the Petitioners in W.P.Nos.19742 & 25082 of 2021 and 9336 of 2023	:	Ms.Ananda Gomathy Murugesan
For the Petitioner in W.P.No.14596 of 2023	:	Mr.V.Chandrasekaran
For the Appellant in W.A.No.365 of 2022	:	Mr.Jayesh B.Dolia Senior Counsel for Mr.V.Kalyanaraman
For the Appellant in W.A.No.267 of 2023	:	Mr.P.Muthukumar State Government Pleader
For the Petitioner in W.P.Nos.179 of 2023 and 4542 of 2021	:	Mr.Srinath Sridevan Senior Counsel for Mr.T.K.Bhaskar
For the Appellant in W.A.No.1785 of 2023	:	Mr.P.Elayaraj Kumar for M/s.Ramalingam and Associates
For the Respondents in W.P.Nos.19742 of 2021 and 9336 of 2023	:	Mr.Haja Nazirudeen Additional Advocate General assisted by Mr.M.Venkateswaran Special Government Pleader (Tax)
For the Respondents in W.P.No.25082 of 2021	:	Mr.Haja Nazirudeen Additional Advocate General assisted by Mr.M.Venkateswaran Special Government Pleader (Tax) for R1 Mr.P.Muthukumar State Government Pleader assisted by Mrs.R.Anitha Special Government Pleader for R2

For the Respondents in W.P.No.14596 of 2021	:	Mr.Haja Nazirudeen Additional Advocate General assisted by Mr.M.Venkateswaran Special Government Pleader (Tax) for R2 Mr.P.Muthukumar State Government Pleader assisted by Mrs.R.Anitha Special Government Pleader for R1
For the Respondents in W.A.No.365 of 2022	:	Mr.Haja Nazirudeen Additional Advocate General assisted by Mr.M.Venkateswaran Special Government Pleader (Tax) for R1
For the Respondents in W.A.No.267 of 2023	:	Mr.D.Krishna Pradeep for R1 & R2 Ms.Ananda Gomathy Murugesan for R3
For the Respondents in W.P.Nos.179 of 2023 and 4542 of 2021	:	Mr.R.S.Balaji and Mrs.S.Premalatha for R1

COMMON ORDER

(Made by the Hon'ble Chief Justice)

The issue involved in these present matters is priority of charge.

2. The secured creditors claim the priority of charge as against the Sales Tax, Commercial Tax and Income Tax dues. The secured creditors rely upon the provisions of Section 26E of the Securitisation

and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, hereinafter referred to as "the SARFAESI Act, 2002").

3. *Per contra*, according to the learned Additional Advocate General, the crown debt has the priority charge. He relies upon the judgment of the Division Bench of the Bombay High Court in the case of *Medineutrina Pvt. Ltd. vs District Industries Centre and Ors*[1]*.*

4. The Full Bench of this Court, in the case of *Assistant Commissioner (CT) Anna Salai-III Assessment Circle vs Indian Overseas Bank and Another*[2] has framed the following issues for consideration:

> "a) As to whether the Financial Institution, which is a secured creditor, or the department of the Government concerned, would have the 'Priority Charge" over the mortgaged property in question, with regard to the tax and other dues.

1 AIR 2021 Bom 135
2 AIR 2017 Mad 67 (FB)

b) As to the status and the rights of a third party purchaser of the mortgaged property in question."

5. The Full Bench of this Court, answered the reference and held that the rights of the 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.

6. The Full Bench of the Bombay High Court. In the case of *Jalgaon Janta Sahakari Bank Ltd. and Anr vs Joint Commissioner of Sales and Anr*[3] held that the secured creditor would have the priority charge, as contemplated under Section 26E of the SARFAESI Act, 2002, in case the same is registered under Section 26B of the SARFAESI Act, 2002. The secured creditors, in these petitions claims that their security is registered under Section 26B of the SARFAESI

3 2022 Online SCC Bom 1767

Act, 2002.

7. In view of the Full Bench judgments, as referred to above, it is held that the secured creditor has priority charge over the claims of the Sales Tax, Commercial Tax and Income Tax.

8. In case auction is held by the secured creditors and the sale certificates are not placed and/or registered, then the Registering Authority may register the same, notwithstanding the attachment of Sales Tax, Income Tax or Commercial Tax Departments.

9. In case the auction sale is conducted by the secured creditor and they have received excess amount than their dues, then they are liable to remit the excess amount to the Departments. However, if they have not received the amount in excess of the amount due and payable to them, then they are not required to remit any amount to the Departments and the Departments cannot sustain prosecution against the Authorised Officer or the Officer of the secured creditor for not remitting the amount.

10. The present matters are disposed of in the above term. There will be no order as to costs. Consequently, W.M.P.Nos.21016, 21018, 26423, 26425 & 5170 of 2021, 20165 & 2929 of 2022 and 2761, 8171, 9444, 9445, 169 & 14075 of 2023 are closed.

(S.V.G., CJ.) (P.D.A., J.)

27.09.2023

Index : Yes/No
Neutral Citation : Yes/No

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To

1. The Assistant Commissioner
(Commercial Ta, Cuddalore Town)
St.Joseph's School Road
Mangakuppam, Cuddalore – 607 001.

THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESAVALU, J.

(drm)

W.P.No.19742 of 2021 & etc. batch

27.09.2023