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W.P.(MD).Nos.10114 of 2021 and 14488 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.09.2023

PRONOUNCED ON :28.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.10114 of 2021 and 14488 of 2023

and

W.M.P.(MD)No.7837 of 2021, 12290 and 12291 of 2023

W.P.(MD).No.10114 of 2021:

M/s.VMR Textiles Private Limited,
Represented by its Director Ramasamy
Sivanantham,
36, Theeran Chinnamalai Street,
Veerappanchatram Post,
Erode-638 004.

... Petitioner

Vs.

1.The Sub-Registrar,
Registration Department,
Taluk Office Campus,
Thirupathur.



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- 2.The District Registrar,
Registration Department,
Muthurani Muduku Lane,
Karaikudi-630 101.
- 3.Deputy Inspector General of Registration Office,
Integrated Complex of Registration Department,
TNAU Nagar,
Rajakampeeram, Y.Othakadai,
Madurai-625 107.
- 4.The Superintendent of Customs,
Customs Preventive Unit,
Thondi-623 409.
- 5.IFCL Limited,
Continental Chambers,
142, Mahatma Gandhi Road,
Post Box No.3318,
Chennai-600 034.
- 6.Pillaiyar Pattiyar Textiles,
Formerly known as Square D Textiles
and Exports Limited,
Registered Office Address at
407-408 GR Complex,
Anna Salai, Nandanam,
Chennai-600 035.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a ***Writ of Mandamus***, to direct the respondents 1



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and 2 to remove the entry of attachment made by the 4th respondent on the property of the petitioner company admeasuring 29 acres and 51 cents and situated at Tirupattur Village, Tiruppattur Town Panchayat, Parankipatti Village as survey Nos. 1/3, 1/1, 158/3, 158/2, 158/6, 160/1, 160/2, 160/3, 160/5, 164/2, 157/3B, 157/5, 157/4A and 164/1 together with buildings and structures constructed thereon executed and registered under Document No.3605/2010.

For Petitioner	: Mr.Hari Radhakrishnan
For R1 to 3	: Mr.B.Saravanan Additional Government Pleader
For R4	: Mr.N.Dilip Kumar
For R5	: Mr.K.Muraleedharan

W.P.(MD).No.14488 of 2023:

M/s.VMR Textiles Private Limited,
Represented by its Director,
Ramasamy Sivanantham,
(Presently residing at)
36, Theeran Chinnamalai Street,
Veerappanchatram Post,
Erode-638 004.
(Having office at)
3/1017, 1018, Udayanathapuram Cross,
Kandavarayanpatti, Thiruppattur-630 211,
Sivagangai District.

... Petitioner

Vs.



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- 1.The Deputy Commissioner of Customs,
Customs Division,
Ramnad Madurai-Rameshwaram Road,
Bharathi Nagar, Ramanthapuram 623 503.
- 2.The Superintendent of Customs,
Customs Preventive Unit,
No.7/106, Lakshmipuram Beach Road,
Thondi-623 609.
- 3.The Joint Commissioner of Customs,
Customs Division,
Ramnad Madurai-Rameshwaram Road,
Bharathi Nagar, Ramanthapuram 623 503.
- 4.The Sub-Registrar,
Registration Department,
Taluk Office Campus,
Thirupathur.
- 5.IFCL Limited,
Continental Chambers,
142, Mahatma Gandhi Road,
Post Box No.3318,
Chennai-600 034.

... Respondents

(R5 is suo motu impleaded, vide Court order dated 17.08.2023 in WP(MD)Nos.10114 of 2021 and 14488 of 2023)

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorarified Mandamus***, to quash the



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impugned order C.No.GEN/LGL/Misc/166/2023 dated 18.04.2023 issued by the 3rd respondent and further, to direct the 3rd and 4th respondents to lift the attachment effected on 15.02.2019 in respect of property situated at Thirupattur Village, Thirupattur Town Panchayat, Parankipatti Village in Survey Nos.1/3, 1/1, 158/3, 158/2, 158/6, 160/1, 160/2, 160/3, 160/5, 164/2, 157/3B, 157/5 157/4A and 164/1.

For Petitioner	: Mr.Hari Radhakrishnan
For R1 to 3	: Mr.N.Dilip Kumar
For R4	: Mr.B.Saravanan
	Additional Government Pleader
For R5	: Mr.K.Muraleedharan

COMMON ORDER

The writ petition in W.P.(MD)No.10114 of 2021 is filed for writ of writ of Mandamus directing the respondents to remove the entry of attachment made by the 4th respondent on the property of the petitioner company admeasuring 29 acres and 51 cents situated at Tirupattur Village Tirupattur Town Panchayat, Parankipatti Village in S.Nos. 1/3, 1/1, 158/3, 158/2, 158/6, 160/1, 160/2, 160/3, 160/5, 164/2, 157/3B, 157/5, 157/4A and 164/1 together with buildings



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and structures constructed thereon executed and registered under Document No.3605 /2010. Pending writ petition the respondents have considered the claim of the petitioner and rejected the same vide order dated 18.04.2023. Challenging the same the writ petition in W.P.(MD)No.14488 of 2023 is filed for writ of Certiorarified Mandamus, to quash the impugned order dated 18.04.2023 and to direct the respondents 3 and 4 to lift the attachment effected on 15.02.2019 in respect to the property stated in the affidavit.

2. The brief facts of the case are that the petitioner is engaged in the business of cotton seeds. The petitioner had purchased the immovable properties admeasuring 29 acres and 51 cents situated in Survey Nos.1/3, 1/1, 158/3, 158/2, 158/6, 160/1, 160/2, 160/3, 160/5, 164/2, 157/3B, 157/5, 157/4A and 164/1, in Tirupattur Village, Tiruppattur Town Panchayat, Parankipatti Village, together with buildings and structures thereunder SARFAESI proceedings from M/s.IFCL Limited for the sale price of Rs.2,46,00,000/- vide sale certificate dated 16.04.2010, sale deed dated 09.07.2010 and registered



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Document No.3605 of 2010. M/s.IFCL Limited was secured by the erstwhile owner M/s.Pillaiyar Pattiyar Textiles for various credit facilities in the nature of Rupee Term Loans and Foreign Currency Loans. The said M/s.Pillaiyar Pattiyar Textiles defaulted repayment of loan, hence, the M/s.IFCL Limited initiated proceedings under SARFAESI Act. The mortgaged immovable properties were put up for sale under public notice. The petitioner had offered highest bid price and hence, the sale was concluded in favour of the petitioner, sale certificate was issued acknowledging the receipt and handed over the delivery and possession of the same. The sale deed was executed on 09.06.2010 and registered in Document No.3605 of 2010 with Sub-Registrar, Tiruppattur. The sale certificate clearly mentioned that the sale was made free from all encumbrances. The petitioner has also verified the records available with Sub Registrar Office to find out whether there were any encumbrance or attachment in the encumbrance certificate. No such encumbrance or attachment are shown. Consequent to the sale, the petitioner had become absolute owner of the subject properties. The petitioner as a part of reorganization recently demerged its



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substantial undertaking along with some portion of subject immovable properties and vesting thereof into M/s. Parampara Spinning Mills Private Limited in terms of Scheme of Arrangement approved vide order dated 11.12.2017. In terms of the said order, the properties shall stand transferred to and vested with M/s. Parampara Spinning Mills Private Limited. Based on the Scheme of Arrangement, the petitioner and the demerged company have submitted the order of the High Court along with scheme for registration before the Sub Registrar, Thirupathur. However, the Sub Registrar refused to register due to the attachment order made by the Commercial Tax Department with respect to the dues of M/s.Pillaiyar Pattiyar Textiles. The respondents have issued the said attachment order without noticing that the properties were already transferred in favour of the petitioner through SARFAESI sale. Aggrieved over the attachment order, the petitioner filed W.P.No.28735 of 2018 and this Court vide order, dated 01.10.2020, allowed the writ petition by directing the Sub Registrar to remove the attachment made by the Commercial Tax Department. The petitioner approached the Sub Registrar to remove the



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attachment made by the Commercial Tax Department. The respondents refused to do so stating that the same property is attached under Customs Act on 15.02.2019.

3. The contention of the petitioner is that the attachment is effected in a mechanical way unmindful of the fact that the property does not belong to M/s.Pillaiyar Pattiyar Textiles. Hence the petitioner submitted representation dated 24.11.2020 stating the facts that as on the date of attachment the properties belonging to the petitioner company and not belonging to the defaulter, but the respondents failed to consider the petitioner's representation. Hence the petitioner had filed W.P.(MD)No.10114 of 2021 for Mandamus. Pending disposal, the petitioner again submitted a requisition letter, dated 30.01.2023, to the first respondent to lift the attachment. Since there was no response, the petitioner had filed W.P.(MD)No.5967 of 2023, seeking directions to consider the representations dated 30.01.2023. Pending consideration of the said writ petition, the third respondent issued the impugned order dated



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18.04.2023, rejecting to lift the attachment, hence the W.P.(MD)No.5967 of 2023 has become infructuous and the same was dismissed on 25.04.2023. Hence, the petitioner has challenged the impugned rejection order dated 18.04.2023 in W.P.(MD)No.14488 of 2023. The contention of the petitioner is that the impugned order was passed without application of mind. Also, by not following the procedures stipulated under the statute and the rules, hence, the petitioner is before this Court.

4. The Assistant Commissioner of Customs, being the appropriate authority had filed counter in W.P.(MD)No. 10114 of 2021 and also in W.P. (MD)No.14488 of 2023, stating that M/s.Pillaiyar Pattiyar Textiles (6th respondent in W.P.(MD)No.10114 of 2021) was originally known as M/s. Square (D) Textiles Exports Limited, Thirupathur. M/s.Square (D) Textiles Exports Limited was owing certain dues towards Custom Duty to the Central Government way back in the year 2004 to the tune of Rs.31,96,483/- and which has now accumulated to Rs.76,49,629/- due to interest component. In order to



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recover the dues, from the said M/s.Square (D) Textiles Exports Limited, the 4th respondent requested the 1st respondent Sub Registrar to notify in the property records about the dues to the Central Government. It is learnt that the 6th respondent owed certain amount to the financial institution IFCI (5th respondent) and since the 6th respondent had not repaid the same, the 5th respondent sold the property of the 6th respondent under SARFAESI act to the petitioner. Since the petitioner acquired the property of the 6th respondent on 09.06.2010 he is also liable to pay any dues to the Government existed on or before 09.06.2010 from the 6th respondent. The 6th respondent is liable to pay customs duty of Rs.31,96,483/- as on 2004 and hence, the demand notice was pasted on the factory premises of the 6th respondent by the 4th respondent. Efforts were also taken to send demand notice to the 6th respondent but he is not traceable now. The petitioner is challenging the dues pertaining to 6th respondent. The contention of the respondent is that the 4th respondent, has issued letter vide O.C.No.668/2004, dated 01.11.2004, to the Sub Registrar, Thirupathur, for not registering any kind of transaction on the above said



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property till the clearance is issued by the Customs Department and requested for encumbrance certificate for a period from 01.01.1987 to 03.11.2004, the same was received by the Sub Registrar on 04.11.2004. Since the letter requesting to make an entry in the Registration Book was issued well before the date of transfer of title to the said property, the petitioner is also liable to pay the dues of the 6th respondent. Notice of attachment was served on the company by affixing the same on the front door of the company on 09.11.2004 and Mahazar was drawn to that effect and also the attachment was sent through RPAD to the address maintained by the respondents. Hence, the 6th respondent has dealt with the property even after notice of attachment. The Sales Tax Department attached the property after the transfer of title and the same was set aside. But the Customs authorities have attached the property prior to the sale, hence, the case of the 4th respondent Customs authority cannot be compared with that of the Sales Tax Department. Hence the 4th respondent prayed to dismiss the writ petition.



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5. The respondents 1 to 3 in W.P.(MD)No.14488 of 2023 has submitted that the petitioner has alternate remedy, therefore, the writ petition is not maintainable. Hence, the respondents 1 to 3 in W.P.(MD)No.14488 of 2023 prayed to dismiss the writ petition.

6. Heard Mr.Hari Radhakrishnan, the Learned Counsel appearing for the petitioner, Mr.B.Saravanan, the Learned Additional Government Pleader appearing for the Registration Department respondents 1 to 3 in W.P.(MD).No. 10112 of 2021, Mr.N.Dilip Kumar, the Learned Standing Counsel for the 4th respondent in W.P.(MD).No.10112 of 2021 and Mr.K.Muraleedharan, the Learned Counsel appearing for the 5th respondent and perused the records placed before this Court.

7. The claim of the Customs Department is that the property was sold in the year 2010 only i.e. sale certificate dated 16.04.2010 and sale deed dated 09.07.2010. However, the attachment was prior to that i.e., in the year 2004 for



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which the Customs Department relied on the communication of Superintendent of Customs in O.C.No.668/2004, dated 01.11.2004, to the Sub Registrar, Thirupathur. Even though the customs authorities have intimated to the registering authority as early as 2004, there is no entry about the attachment in Register maintained by the Registration Department. Simply sending a letter to the Registration Department is not sufficient to state that the property is attached. Having sent such communication, it is incumbent on the Customs authorities to make sure that the entry of attachment is evident in the encumbrance register. When there is no such entry, the same cannot be considered as effective attachment. Since the purchaser would verify the encumbrance register, if there is no subsisting encumbrance or no subsisting attachment, then the subsequent purchaser is absolutely protected under law as “bonafide purchaser”. Therefore, the petitioner is protected as bonafide purchaser and the contention of the respondents that attachment was prior to sale cannot be give a right to the respondents.



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8. The next contention of the petitioner is that the SARFAESI Act was given overriding effect than any other Act including Customs Act under Section 26E under Chapter IV-A. The said amendment under Act 44 of 2016 came into effect from 24.01.2020. The said provision under Section 26E starts with a non obstante clause and hence the mortgage to bank has 1st charge under SARFAESI Act. But the Learned Counsel appearing for the respondents submitted that the Act came into effect only on 24.01.2020 and retrospective effect was not granted, hence the petitioner cannot invoke the said amendment. Admittedly the said provision has no retrospective effect. But the same is applicable to the pending lis as held by the Hon'ble Division Bench in W.A.Nos.1512 of 2021 and batch vide order dated 01.09.2022 and the relevant portion is extracted hereunder:

“29. Now coming to the question of whether the amendments by way of Section 26E of the SARFAESI Act and Section 31B of the Recovery of Debts and Bankruptcy Act, would be applicable to the Bankers in the present case in view of the fact that Section 31B was inserted with effect from 01.09.2016, while Section 26 E was inserted and notified to come



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into force on 24.01.2020. The above question need not detain us long for the following reasons:

a) Firstly, the Full Bench of this Court in W.P.No.2675 of 2011 etc. batch, dated 10.11.2016 has held that it would govern the rights of the parties even in respect of a pending lis. The relevant portion of the same reads as under:

"3. There is, thus, no doubt that the rights of a secured creditor to realise secured debts due and payable by sale of assets over which security interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority. This section introduced in the Central Act is with "notwithstanding" clause and has come into force from 01.09.2016. The law having now come into force, naturally it would govern the rights of the parties in respect of even a lis pending."

The Special Leave Petition is stated to be pending before the Apex Court and there is an order of "Status Quo" in SLP (Civil) No.20471 of 2021 dated 16.03.2018. In view thereof, the Full Bench Order of this Court would continue to bind/govern.



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b) Secondly, we would think the examination of the above question may be academic, in view of the fact that even if the recovery proceeding is set aside for any reason, the same may not serve any purpose. The claim of the Bankers/ Financial Institutions is admittedly still outstanding, hence it is open for the Bankers/ Financial Institutions on proceeding being set-aside to invoke Section 26 E of the SARFAESI Act and Section 31 B of the Recovery of Debts and Bankruptcy Act as it is applicable presently in any view. In similar circumstances, the Hon'ble Supreme Court in the case of *Dena Bank v. Bhikhabhai Prabhudas Parekh and Co.* [(2000) 5 SCC 694] while examining the question whether the State would have precedence to recover the tax dues over that of secured creditors after clarifying the position on the above issue, proceeded to examine the further contention that the petitioners therein who were partners of a firm that Section 15(2-A) of the Karnataka Sales Tax Act, which provided that where any firm is liable, the firm and each of the partners would be jointly and severally liable was introduced only with effect from 18.11.1983, however the taxes that were sought to be recovered related to periods prior to 1964-65 i.e., prior to the insertion of the above provision. The Apex Court after holding that it would be prospective, however



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proceeded to hold that even if the recovery proceedings were to be set aside, it may not serve any purpose since it was open for the State to resort to the amended Section 15(2-A) of the Karnataka Sales Tax Act which would prevail over the right of the appellant Bank. The following portion is relevant and thus extracted:

"21.....Even if we were to set aside the sale held by the State, it will merely revive the arrears outstanding on account of sales tax to which further interest and penalty shall have to be added. The amended Section 15(2-A) of the Karnataka Sales Tax Act shall apply. The State shall have a preferential right to recover its dues over the rights of the appellant Bank and the property of the partners shall also be liable to be proceeded against. No useful purpose would, therefore, be served by allowing the appeal which will only further complicate the controversy."

The position here is no different. Apart from the fact that the Full Bench has while considering the applicability of Section 31 B of the Recovery of Debts and Bankruptcy Act has held that it would apply even to lis pending, which would be the position in respect of Section 26E of the SARFAESI Act as well. Even if this Court were to set aside the recovery proceedings for any reason, the Bankers/ Financial Institutions right to claim priority in terms of Section 31 B of the Recovery of Debts and Bankruptcy Act and Section 26 E of the SARFAESI Act would be



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available and the right to recover under the Income Tax Act, 1961 must yield to the provisions under the SARFAESI Act and the Recovery of Debts and Bankruptcy Act and thus, the above exercise may not serve any useful purpose. Therefore, the above issue appears to be a mere academic exercise and we do not intend to examine the question any further.”

Therefore, apply the aforesaid judgment, in the present case also the lis is pending and hence the bank has right to declare the amount as outstanding and invoke the amended provision and claim priority over the outstanding amount of the bank.

9. Further, the petitioner is protected under the mortgage executed by the M/s.Pillaiyar Pattiyar Textiles with the financial institution, which is prior to the attachment order of the Customs Department. In order to ascertain whether the mortgage is prior to the attachment, this Court suo motu impleaded the IFCL Limited as 5th respondent in W.P.(MD)No.14488 of 2023. The Learned Counsel appearing for the IFCL, 5th respondent submitted that the



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memorandum of deposit of title deeds was entered on 31.07.1997 and therefore, the contract executed between the M/s.Pillaiyar Pattiyar Textiles and the financial institution is prior to the attachment.

10. The Learned Counsel appearing for the respondents submitted that the mortgage was executed by deposit of title deeds and the same was not registered. Whether such unregistered mortgage of deposit of title deeds can be considered as a valid mortgage? The mortgage of deposit of title deeds may be liable for registration, but the instrument written subsequently evidencing the agreement of deposit of title deeds was not liable for registration. In other words, registration was not compulsory where the instrument evidencing the agreement relating to deposit of title deeds until 30.11.2012 under the Registration Act. It is an admitted fact that the banks were following the procedure of mortgage by deposit of title deeds and the same was not required to register. The present deposit of title deeds dated 31.07.1997 falls under the category of “not compulsory”. Thereafter, under the Tamil Nadu Amendment



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Act 2012 with effect from 01.12.2012 the registration of instrument evidencing the agreement relating to the deposit of title deed was made compulsory under section 17(i) of the Registration Act. When subsequently the registration of mortgage of deposit of title deeds was made compulsory as stated supra, therefore, the contention of the respondent that the earlier mortgage is not registered cannot be accepted and the bank is in advantageous situation. Moreover, non-registration of the deposit of title deeds alone, would not determine the rights of the parties. In the present case, if the plea of the respondents ought to be considered that deposit of title deeds is not registered, then at the same breath, it ought to be considered that the attachment is also not registered. Then the bank and the Customs Department are standing on the same footing.

11. Moreover, there is no provisions in the Customs Act granting 1st charge to its dues under its Act. In such circumstances, when both the parties are standing on the same footing and when there are no provisions of 1st charge



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to Customs Department then it ought to be seen which proceedings is first. A similar issue was considered by the High Court of Andhra Pradesh and Telangana in the case of **ICICI Bank Limited Vs. Tax Recovery Officer** vide order dated 04.12.2018 reported in **[2019] 105 Taxman.com 257**. The challenge in the said judgment is an attachment order 14.03.2018, issued by the Tax Recovery Officer under Rule 48 of second schedule. After considering section 281 and rule 48, the Court has elaborately dealt with the issue and has held that there is no provision in the Income Tax Act by which a first charge is created automatically on the properties of the assesses. And also held it is now well settled that wherever the statute does not create a first charge over the property, the crown's debt does not take precedents over the claim of the secured creditor. The relevant portion of the judgment is extracted hereunder:

“31. But the mortgage was created by the 3rd respondent in favour of the petitioner-bank on 11-07-2011, much before the order of assessment was passed under Section 143(3) on 27-12-2011. In other words, the assessee was nowhere near the point of being declared as an assessee in default on the date of creation of the mortgage. Hence, the creation of



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the mortgage cannot be said to have automatically become void in terms of Section 281(1) merely because of the pendency of the proceedings under Section 143 and 142. It required something more to be done, but the same was not done in this case. As a matter of fact even an investigation under Rule 11 was not carried out in this case. Therefore, the order of attachment is clearly illegal. On the date on which the order of attachment was passed, the property had already been sold by the petitioner-bank, in exercise of the power conferred upon the bank under the Securitisation Act, 2002.

32. It is important to note one more aspect. Section 281(1), by its very nature operates only up to the stage of service of notice under Rule 2 of the Second Schedule. Therefore, Section 281(1) obviously deals with a situation, which can be compared to fraudulent preferences dealt with by the Insolvency Laws. Therefore, what is applied to an assessee (or an insolvent under the Insolvency Laws) cannot be applied to a secured creditor like the bank.

33. There appears to be no provision in the Income Tax Act, by which a first charge is created automatically on the properties of the assessee. There is no provision in the Income Tax Act similar to Section 16C of the Andhra Pradesh General Sales Tax Act, 1957.



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34. *It is by now well settled that wherever the statute does not create a first charge over the property, the crown's debt does not take precedence over the claim of the secured creditor. A useful reference can be made in this regard to the decision of the Full Bench of the Madras High Court in U.T.I. Bank Ltd., V. Deputy Commissioner of Central Excise (2007) 75 SCL 20 (Mad.) (FB).*

35. *In Central Bank of India V. State of Kerala, a Three Member Bench of the Supreme Court had an occasion to consider two questions (i) whether Section 36 C of the Bombay Sales Tax Act, 1959 and Section 26 B of the Kerala General Sales Tax Act, 1963, by which a first charge was created on the property of the dealer, are inconsistent with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDB Act) and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Securitisation Act); and (ii) whether by virtue of the non-obstante clauses contained in RDDB Act and Securitisation Act, the two Central Legislations will have primacy over State Legislations. Eventually, the Court held (i) that the RDDB Act, 1993 and Securitisation Act, 2002 do not create a first charge in favour of the secured creditor, (ii) that the relevant provisions of the Sales Tax Laws AIR 2007 Madras 118 2009 21 VST 505 (SC) are not inconsistent with the provisions of the Central Legislations, so as to attract the non*



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obstante clause and (iii) that the charge created under the relevant Sales Tax Laws would prevail over the charge created in favour of the Bank.

36. But in a more recent decision in the Stock Exchange V. V.S. Kandalgoankar (2014) 187 Comp. Cas. 143 (SC), a question arose as to whether a lien created by the operation of the Rules of the Stock Exchange, on the security provided by a member, would have precedence over the dues to the Income Tax Department. After quoting with approval the decision of the Supreme Court in Dena Bank V. Bhikabhai Prabhudas Pareks Co. (2000 (5) SCC 694), the Supreme Court came to the conclusion that the Income Tax Act does not provide for any paramountcy of dues by way of income tax and that the Government dues have priority only over unsecured debts. In its decision in Stock Exchange, the Supreme Court went to the extent of holding that the lien possessed by the Stock Exchange made it a secured creditor and that irrespective of whether the lien was a statutory lien or a lien arising out of an agreement, the same made the holder of the lien a secured creditor, who would have priority over Government dues.

37. Therefore, in the light of the fact that the mortgage was created by the assessee much before a demand was made under Rule 2 and even before an order of assessment was passed and in the light of the fact that before the stage of issue of a certificate of recovery, the voidity under Section 281(1) is not automatic, the petitioner-bank deserves to succeed.



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38. Accordingly, the writ petition is allowed and the impugned order of attachment is set aside. The Sub-Registrar may proceed to register the sale certificate issued by the Bank upon compliance with the necessary formalities. There shall be no order as to costs.”

In the present case also, there is no provisions in the Customs Act creating 1st charge on the property of the defaulter and the above judgment is applicable to the present case.

12. Admittedly the bank had executed mortgage of deposit of title deeds on 31.07.1997, which is prior to the attachment of the Customs Department which was passed on 01.11.2004. Therefore, financial institution is having 1st charge as secured creditor than the crown debt. Hence, the impugned attachment cannot sustain the scrutiny of law. Hence, the impugned attachment is liable to be quashed.

13. Accordingly the impugned order is quashed and the Sub Registrar is directed to lift the attachment and enter the scheme of arrangement between the



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petitioner and M/s.Parampara Spinning Mills as approved by the Court. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

14. With the above said observations, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

28.11.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To

- 1.The Sub-Registrar,
Registration Department,
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- 2.The District Registrar,
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S.SRIMATHY, J.

Tmg

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