

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

**TUESDAY, THE THIRTEENTH DAY OF JUNE
TWO THOUSAND AND TWENTY THREE**

PRESENT

**THE HONOURABLE SRI JUSTICE P NAVEEN RAO
AND
THE HONOURABLE SRI JUSTICE NAGESH BHEEMAPAKA**

WRIT PETITION NOS: 41691 AND 42450 OF 2018

W.P No. 41691 of 2018

Between:

The State Bank of India, Stressed Assets Management Branch-I
Secunderbad.Rep. by its Assistant General Manager

...PETITIONER

AND

1. The Deputy Commercial Tax Officer Jogipet Unit, Office of Medak Circle Nizamabad Division.
2. The Deputy Commercial Tax Officer Begumpet Circle, Begumpet Division Hyderabad.
3. M/s Vijlak Pharma Limited, Represented by its Managing Director D.No.7-1-54/1, Flat No.204, Sai Satya Residency Ameerpet, Hyderabad-500016.
4. Sri K.Raghava Reddy, S/o Sri K.V.Subba Reddy H.No.6-3-609/105, Flat No.302 Uday Tulasi Niketan, Anand Nagar Colony Khairatabad, Hyderabad-500004
5. Smt K.Rajani, W/o Sri K.Raghava Reddy H.No.6-3-609/105, Flat No.302 Uday Tulasi Niketan, Anand Nagar Colony Khairatabad, Hyderabad-500004
6. Sri Avula Edukondala Reddy, S/o Late A.Venkata Subba Reddy H.No.6-3-609/105, Flat No.302 Uday Tulasi Niketan, Anand Nagar Colony Khairatabad, Hyderabad-500004
7. Sri K.Anil Reddy, S/o Late K.Venkata Subba Reddy H.No.7-1-31, Flat No.101 Mahalaxmi Mansion, Dharam Karam Road Leela Nagar, Ameerpet, Hyderabad-500016
8. Smt.K.Eswaramma, W/o Late K.Venkata Subba Reddy H.No.7-1-31, Flat No.101 Mahalaxmi Mansion, Dharam Karam Road Leela Nagar, Ameerpet, Hyderabad-500016
9. The State of Telangana Commercial Tax Department Secretariat, Hyderabad Rep. by its Principal Secretary.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ or order or direction more particularly the one in the nature Writ of Mandamus declaring the order of attachment passed by the 1st Respondent dated 30/11/2016 against the property mortgaged to the Petitioner Bank viz., property admeasuring 9,317 sq yds i.e. Acres 1.37 Guntas of site with RCC building and sheds thereon situated in Survey No.15, Plot No.7A situated in Gaddapotharam Village, Jinnaram Mandal, Sangareddy District, Telangana State and also the subsequent auction sale notice dated 03/07/2018 communicated to the Petitioner and also the auction held thereafter in relation to the said property as void, illegal, arbitrary, high handed and without jurisdiction and contrary to Section 31B of The Recovery of Debts and Bankruptcy Act, 1993 and consequentially to set aside the same or in the alternative to direct the Respondents 1 and 2 to remit the entire sale proceeds of the auction in relation to the property mortgaged to the Petitioner Bank viz., property admeasuring 9,317 sq yds i.e. Acres 1.37 Guntas of site with RCC building and sheds situated in survey No.15, Plot No.7A situated in Gaddapotharam Village, Jinnaram Mandal, Sangareddy District, Telangana State with the Petitioner Bank.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to pass interim orders directing the Respondents 1 and 2 to deposit the entire sale proceeds realized in relation to the auction of the property mortgaged to Petitioner Bank viz., admeasuring 9,317 sq. yds ie., Acres 1.37 guntas of site with RCC building and sheds thereon situated in Survey No.15, Plot No. 7A situated in Gaddapotharam Village, Jinnaram Mandal, Sangareddy District, Telangana State in a no lien account with the petitioner Bank pending disposal of the main Writ Petition.

Counsel for the Petitioner: SRI. E. MADAN MOHAN RAO

Counsel for the Respondent No. 1,2 and 9: GP FOR COMMERCIAL TAX (TG)

Counsel for the Respondent No.3 to 8: NONE APPARED

WRIT PETITION NO: 42450 OF 2018

Between:

State Bank of India, Stressed Assets Management Branch-I Secunderbad.
Rep. by its Assistant General Manager

...PETITIONER

AND

1. The Deputy Commercial Tax Officer, Jogipet Unit, Office of Medak Circle Nizamabad Division.
2. The Deputy Commercial Tax Officer, Begumpet Circle, Begumpet Division Hyderabad.
3. M/s Vijlak Pharma Limited, Represented by its Managing Director D.No.7-1-54/1, Flat No.204, Sai Satya Residency Ameerpet, Hyderabad-500016.
4. Sri K.Raghava Reddy, S/o Sri K.V.Subba Reddy H.No.6-3-609/105, Flat No.302 Uday Tulasi Niketan, Anand Nagar Colony Khairatabad, Hyderabad-500004
5. Smt K.Rajani, W/o Sri K.Raghava Reddy H.No.6-3-609/105, Flat No.302 Uday Tulasi Niketan, Anand Nagar Colony Khairatabad, Hyderabad-500004
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8. Smt.K.Eswaramma, W/o Late K.Venkata Subba Reddy H.No.7-1-31, Flat No.101 Mahalaxmi Mansion, Dharam Karam Road Leela Nagar, Ameerpet, Hyderabad-500016.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ or order or direction more particularly the one in the nature Writ of Certiorari calling for the records relating to Recovery Appeal No.6/2018 on the file of The Debts Recovery Tribunal-II, Hyderabad filed against the order passed by the Recovery Officer-1 of The Debts Recovery Tribunal-II, Hyderabad in MP.No.211/2018 in RP.No.1784/2017 in OA.No.286/2017 and to quash the order passed by the Presiding Officer of The Debts Recovery Tribunal-II,

Hyderabad in the said Recovery Appeal No. 6/2018 dated 11/10/2018 and consequentially to allow the said Appeal as prayed for.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to dispense with filing of certified copy of order passed in R.A.No.06/2018 dt. 11.10.2018 on the file of the Recovery Tribunal at Hyderabad

IA NO: 2 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to pass interim orders directing the respondents 1 and 2 to deposit the entire sale proceeds realized in relation to the auction of the property mortgaged to petitioner Bank viz., admeasuring 9,317 sq.yds i.e. Acres 1.37 Guntas of site with RCC building and shed situated in Survey NO.15, plot NO. 7A situated in Guddapotharam Village, Jinnaram Mandal, Sangareddy District, Telangana State in no lien account with the petitioner Bank, pending disposal of the main writ petition.

Counsel for the Petitioner: SRI.E. MADAN MOHAN RAO

Counsel for the Respondent No.1 and 2: GP FOR COMMERCIAL TAX (TG)

Counsel for the Respondent No.3 to 8: NONE APPARED

The Court made the following: COMMON ORDER

**HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

WRIT PETITION NOS.41691 and 42450 of 2018

COMMON ORDER : (Per Hon'ble Sri Justice P.Naveen Rao)

In W.P.No.42450 of 2018, petitioner-Bank is aggrieved by the orders passed by the Recovery Officer, Debts Recovery Tribunal in rejecting the application to direct the respondents to comply the provisions under Section 31-B of Recovery of Debts and Bankruptcy Act, 1993 (for short, 'Act, 1993') and to enforce the recovery order, which decision is affirmed by the Debts Recovery Tribunal. In W.P.No.41691 of 2018, petitioner-Bank is challenging the attachment order issued by the Deputy Commercial Tax Officer (1st respondent) attaching the secured asset.

2. The third respondent borrowed money from the petitioner bank and respondent Nos.4 to 8 stood as guarantors for the loan facilities availed by the third respondent. The loan facilities extended to third respondent were secured by way of mortgaging different properties including the property admeasuring 9,317 square yards with RCC building and sheds situated in Sy.No.15, Plot No.7-A, Gaddapotharam Village, Jinnaram Mandal, Sangareddy District Telangana State.

3. Holding that the third respondent failed to discharge the debt, the bank declared the loan account of the third respondent as non-performing asset and the bank has taken recourse to the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (for Short "2002 Act") and Recovery of Debts and Bankruptcy Act, 1993 (for Short "1993 Act") to recover the money due. The petitioner filed O.A.No.1179 of 2013 in Debts Recovery Tribunal, Hyderabad subsequently re-numbered as O.A. No.286 of 2017 on the file of Debts Recovery Tribunal-II, Hyderabad. The said O.A was decreed for the debt amount of ₹ 9,16,61,397/- with *pendent lite* and future interest and costs. Recovery certificate was issued on 13.09.2017. Challenging the same though the respondents filed W.P.No.26263 of 2018, but the same was withdrawn.

4. The petitioner bank has filed an application before the Recovery Officer-I requesting the Recovery Officer to comply the provision under Section 31B of the 1993 Act and to enforce the recovery order already passed. The said application was rejected by order dated 28.07.2018. The Recovery Officer held that he is not competent to declare that petitioner-Bank has priority over the dues to be recovered by the State Government under Section 82 of the TGST Act. The Debts Recovery Tribunal-I dismissed Appeal No.6 of 2018 by order dated 11.10.2018

affirming the opinion expressed by the Recovery Officer. Challenging these two orders, petitioner filed W.P.No.42450 of 2018.

5. On 30.11.2016 respondent Nos.1 and 2 passed attachment order attaching the secured assets and on 03.07.2018 they have issued sale notice under the Revenue Recovery Act. W.P.No.41691 of 2018 is filed challenging the attachment order by the Deputy Commercial Tax Officer, Government of Telangana, Jogipet unit of Medak Circle, Nizamabad Division, dated 30.11.2016, attaching 9,317 square yards of land with RCC building and sheds in Sy.No.15, Plot No.7A situated in Gaddapotharam Village, Jinnaram Mandal, Sangareddy District on the ground that the borrower of the Bank is due in taxes to the State.

6. The borrower of petitioner-Bank is a dealer. He has availed Sales Tax deferment incentive for setting up the industrial unit available for a period of 14 years from the date of setting up the unit. As per the scheme formulated by the Government as incentive the tax payable under TSGST, CST and VAT Act is treated as interest free loan. The unit has to pay deferred sales tax at the end of the 14th year. If not paid, it is treated as dues and interest @ 21.5% is levied. The State alleges that though 3rd respondent availed the incentive but failed to repay and became a defaulter. As per Government Orders, the amount due is recoverable. On 11.11.2013, demand notice was issued demanding to pay the tax arrears, going back to 1998-1999, a total of ₹ 1,73,36,581/-.

The Officials of the State Government have also invoked Revenue Recovery Act to recover the money due. The subject property was auctioned on 30.07.2018 for sale consideration of ₹ 1,90,00,000/- and sale certificate was also registered in the name of the highest bidder.

7. In both the writ petitions, the parties are same. The orders of Deputy Commercial Tax Officer dt. 30.11.2016 and the Orders of Recovery Officer and Debts Recovery Tribunal concern same property mortgaged by the borrower. Therefore, they are considered by this common order.

8. We have heard learned senior counsel for the petitioner bank Sri E Madan Mohan Rao and learned standing counsel for the respondent Nos. 1 and 2 Sri Venkateshwar Rao.

9. Learned senior counsel contended that as security interest is created in favour of petitioner bank, the bank has the first charge to recover its loan amount.

9.1. He would further contend that in view of provision under Section 31B of the 1993 Act, the Bank's claim shall prevail over any other claims even if there is any conflict in the two enactments and the bank has the priority to recover the debts while selling the secured assets mortgaged with the bank.

9.2. In support of his contentions learned senior counsel placed reliance on **STATE BANK OF INDIA, KACHIGUDA, HYDERABAD Vs. UNION OF INDIA AND OTHERS¹, STATE BANK OF M.P AND ANOTHER Vs. STATE BANK OF INDORE AND OTHERS², STATE BANK OF INDIA Vs UNION OF INDIA AND OTHERS³, 9 HOMES PROJECTS AND ANOTHER Vs. THE SUB REGISTRAR, QUTHBULLAPUR⁴.**

10. According to the learned standing counsel, Section 31-B of the Act, 1993 cannot take away right of the State Government recovering arrears under Section 16C of the APGST Act, 1957 and the Telangana Value Added Tax Act, 2005 as the said right accrued from 1998 to 2013, whereas Section 31-B was inserted on 01.09.2016. The dealer is required to pay sales tax from the date of operation of the industrial unit. The Unit commenced operations in the year 1998. In view of the incentive scheme, the payment of sales tax due from the year 1998 was deferred by 14 years. Since the amounts are not paid, the due relates back to the year 1998 and tax is required to be paid from that year and, therefore, the amount due is much prior to the introduction of Section 31-B in the Act, 1993. The said provision is prospective effect only.

¹ 2020 (4) ALD 261 (TS) (DB)

² (2002) 10 SCC 441

³ 2021 (5) ALT 185 (D.B.)

⁴ W.P.NO.15379 OF 2020

11. He would further submit that section 31-B was notified on 01.09.2016, whereas Telangana Goods and Services Act, 2017 came into force from 01.07.2017. Section 82 of the Act also employs non-abstante clause and it being a later enactment, even if there is conflict between two provisions, Section 82 being the later law, shall prevail and the State government shall have the first charge over the properties of the dealer to recover the tax due to the State.

12. He would further submit that auction was conducted on 30.07.2018 and after 28 rounds of bidding M/s. Mishra Chemicals Ltd., was declared as highest bidder for sale consideration of ₹ 1.90 crores and sale certificate was registered in their favour. Even though said information is available Bank has not chosen to implead the auction purchaser and in the absence of auction purchaser, no relief can be granted.

13. The question for consideration is whether in terms of Section 31B of the Act, 1993 the bank has priority over the claim of Commercial Tax Department of the State Government, in spite of employing non-abstante clause in Section 82 of Telangana State Goods and Services Act, 2017.

14. Section 31E of the 1993 Act is inserted by way of amendment Act 44 of 2016 and came into force with effect from 01.09.2016. Section 31B of the 1993 Act reads as under:-

"31B. Priority to secured creditors.—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."

15. According to this provision notwithstanding anything contained in any other law, the rights of secured creditors to realize 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 etc. In terms of this provision, the bank has the priority to recover the dues by selling the security asset created with the bank.

16. Section 82 of the Telangana State Goods and Services Act, reads as under:

"82. Tax to be first charge on property: Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person."

17. According to this section, on any amount payable by a taxable person on account of tax, interest or penalty, the Government shall have the first charge on the property of such taxable person.

18. Act, 2017 is made with objective to make a provision for levy and collection of tax on intra-State supply of Goods or Services or both.

Having realized that existing procedure for recovery of debts due to the Banks and the financial institutions has blocked significant portion of their funds in unproductive assets the Act, 1993 was made to expedite the process of recovery. By Amendment Act 44 of 2016 Section 31-B is inserted in the Act, 1993. Section 31-B assigns priority to secured creditors.

19. It is thus seen that both sections of two different enactments, employ word **'notwithstanding'** implying thereby that the concerned provision of the Acts shall prevail over any other provision in any other enactment.

20. The question for consideration is whether there is a conflict between Section 31-B of Act, 1993 and Section 82 of Act, 2017 and if so which provision prevails?

21. It is appropriate to note that Act, 2017 is a State legislation, whereas Act, 1993 is a central legislation. It has to be assumed that Indian Parliament was aware that there are statutes which vest first charge on the State/Central Government to recover amounts due to the State/Central Government, more particularly taxation legislation. Therefore, it has carefully employed the terminology in drafting the section. Section 31-B of Act 1993 assigns priority to secured creditors to realize secured debts due and payable to them by sale of secured assets

over all other debts and Government dues. Thus, by the time Section 82 of Act, 2017 was made, the filed is already occupied by Section 31-B of Act, 1993. It makes abundantly clear that notwithstanding any law governing recovery of dues to the Government including Revenue, Taxes etc in so far as secured creditor is concerned, he shall have priority to realize secured debts. Thus, having regard to language employed in Section 31-B of Act, 1993 it shall prevail over Section 82 of the Act, 2017.

22. Next question for consideration is since Act, 2017 is later law, will that prevail over Act, 1993.

23. There is an apparent inconsistency between these two provisions. This Court requires to consider whether there is repugnancy of State law compared to Central law.

24. The Doctrine of repugnancy has been enshrined in Article 254 of The Constitution of India, to deal with conflicting Centre and State laws with respect to legislative enactments on the same subject matter. Article 254 reads as under:

"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the

existing law shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

25. As held by Hon'ble Supreme Court in **Deep Chand Vs State of**

U.P.⁵ repugnancy between two statutory provisions may be ascertained on the basis of these principles. They are :

1. Whether there is direct conflict between the two provisions;
2. Whether the Parliament intended to lay down an exhaustive code in respect of the subject matter replacing the Act of the State Legislature; and
3. Whether the law made by Parliament and the law made by the State legislature occupy the same field.

26. The Hon'ble Supreme Court held:

"28. Nicholas in his Australian Constitution, 2nd Edn. p. 303. refers to three tests of inconsistency or repugnancy:

"(1) There may be inconsistency in the actual terms of the competing statutes;

(2) Though there may be no direct conflict, a State law may be inoperative because the Commonwealth law, or the award of the Commonwealth Court, is intended to be a complete exhaustive code; and

(3) Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject-matter."

This Court in *Ch. Tika Ramji v. State of Uttar Pradesh*¹⁸ accepted the said three rules, among others, as useful guides to test the question of repugnancy. In *Zaverbhai Amaldas v. State of Bombay*¹⁹ this Court laid down a similar test. At p. 807, it is stated:

"The principle embodied in Section 107(2) and Article 254(2) is that when there is legislation covering the same ground both by the centre and by the Province, both of them being competent to enact the same the law of the Centre should prevail over that of the State."

Repugnancy between two statutes may thus be ascertained on the basis of the following three principles:

- (1) Whether there is direct conflict between the two provisions;
- (2) Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature and
- (3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field."

27. In the case of **State Of Maharashtra vs Bharat Shanti Lal Shah &Ors**⁶ on 1 September, 2008, the Supreme Court interpreted the provision of Article 254 in the following manner.

"32. Article 254 of the Constitution succinctly deals with the law relating to inconsistency between the laws made by the Parliament and the State Legislature. **The question of repugnancy under Article 254 will arise when a law made by Parliament and a law made by State Legislature occupies the same field with respect to one of the matters enumerated in Concurrent List and there is a direct conflict in two laws. In other words, the question of repugnancy arises only in connection with subjects enumerated in Concurrent List.** In such situation the provisions enacted by Parliament and State Legislature cannot unitedly stand and the State law will have to make the way for the Union Law. Once it is proved and established that the State law is repugnant to the Union law, the State law would become void but only to the extent of repugnancy. At the same

⁶ (2008) 13 SCC 5

time it is to be noted that mere possibility of repugnancy will not make a State law invalid for repugnancy has to exist in fact and it must be shown clearly and sufficiently that State law is repugnant to Union law.

28. It is vehemently argued by the learned standing counsel that Article 246-A of the Constitution of India empowers the state legislature to make tax laws and therefore the 2017 Act was validly made and it being the later law shall prevail.

29. Article 246-A of the Constitution of India reads as under:

"A.246-A. Special provision with respect to goods and services tax.—

(1) Notwithstanding anything contained in Articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation- The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommenced by the Goods and Services Tax Council."

30. This article grants power to Centre and State Governments to make laws with respect to GST imposed by Centre or such State. Centre has the exclusive power to make laws with respect to GST in case of inter-State supply of goods and/or services. State legislature can make law governing taxation on intra-state supply of goods and services.

31. It is thus discernible from Article 246A that the State Legislature is vested with power to make laws dealing with taxation on intra-state goods and services. The non-obstante clause employed in Article 246A

viv-a-vis Article 254 is only with reference to such taxation and is not a sweeping provision.

32. Having regard to language employed in these two statutory provisions, it is clearly discernible that even though Act, 2017 is later law, Act, 2002 shall prevail. Section 31-B is emphatic in its tone and tenor conveying in clear terms that secured creditor shall have priority right to realize secured debts over all other debts and Government dues including revenues, taxes, cess and rates due to Central Government, State Government, Local Authority. In other words, if secured interest is created in a property, the secured creditor shall have first right to recover. As the field is occupied by the Central legislation, clearly holding that the secured creditor shall have priority right to realize secured debts, a State Legislature even if made later can not seek to encroach upon such field and to that extent Central legislation shall prevail. Further, as per Section 34 of the Act, the provisions of Act, 1993 shall have over riding effect over any other Statute.

33. We also have the advantage of these issues delineated and considered lucidly by Gujarat and Bombay High Courts in the following decisions:

33.1. In **Kalupur Commercial Co-Operative Bank Ltd. v. State of Gujarat**⁷, before Gujarat High Court, issue fell for consideration was when a State tax act (Section 48 of Gujrat VAT Act) also has a **non-obstante clause**, would it give first charge to the state government over the banks (secured creditors) in light of their own **non-obstante clauses** in Section 26-E of SARFESI act and 31B of RDDB Act. After analyzing various decisions passed by the Supreme Court and the other High Courts, the Gujrat High Court, held that in the light of the first priority created on the banks via Section 31B of the RDDB Act, 1993 which came into effect on 01.09.2016, the banks shall have priority over State Government. The Hon'ble Gujarat High Court held:

"43. A non-obstante clause is generally appended to a section with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision in the same or other Act mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provisions of Act mentioned in the non-obstante clause, the provision following it will have its full operation or the provisions embraced in the non-obstante clause will not be an impediment for the operation of the enactment or the provision in which the non-obstante clause occurs. [See 'Principles of Statutory Interpretation' 9th Edition by Justice G.P. Singh Chapter V, Synopsis IV at pages 318 & 319]

44. When two or more laws or provisions operate in the same field and each contains a non-obstante clause stating that its provision will override those of any other provisions of law, stimulating and intricate problems of interpretation arise. In resolving such problems of interpretation, no settled principles can be applied except to refer to the object and purpose of each of the two provisions, containing a non-obstante clause. Two provisions in same Act each containing a non-obstante clause, requires a harmonious interpretation of the two seemingly conflicting provisions in the same Act. In this difficult exercise, there are involved proper consideration of giving effect to the object and purpose of two provisions and the language employed in

⁷ 2019 SCC OnLine GU 1892,

each. [See for relevant discussion in para 20 in *Shri Swaran Singh v. Shri Kasturi Lal*; (1977) 1 SCC 750]

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49. The principles discernible from the decision of the Supreme Court in the case of *Kumaon Motor Owners' Union Ltd.* (supra) are that, if there is a conflict between the provisions of the two Acts and if there is nothing repugnant, the provisions in the later Act would prevail. The second principle discernible is that, while resolving the conflict, the court must look into the object behind the two statutes. To put it in other words, what necessitated the legislature to enact a particular provision, later in point of time, which may be in conflict with the provisions of the other Acts. The third principle discernible is that the court must look into the language of the provisions. If the language of a particular provision is found to be more emphatic, the same would be indicative of the intention of the legislature that the Act shall prevail over the other statutes.

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51. The principles of law discernible from the decision of the Supreme Court in the case of *Solidaire India Ltd.* (supra) are that, if there is a conflict between the two special Acts, the later Act must prevail. To put it in other words, when there are two special statutes which contain the non-obstante clauses, the later statute must prevail. This is because at the time of enactment of the later statute, the legislature could be said to be aware of the earlier legislation and its non-obstante clause. If the legislature still confers the later enactment with a non-obstante clause, it means that the legislature wanted that enactment to prevail.

74. The language of Section 48 of the VAT Act is plain and simple and the phrase 'any amount payable by a dealer or any other person on account of tax, interest or penalty' therein assumes significance. The amount could be said to be payable by a dealer on account of tax, interest or penalty once the same is assessed in the assessment proceedings and the amount is determined accordingly by the authority concerned. Without any assessment proceedings, the amount cannot be determined, and if the amount is yet to be determined, then prior to such determination there cannot be any application of Section 48 of the VAT Act. We may also refer to Section 47 of the VAT Act. Section 47 of the VAT Act is with respect to transfer of property by the dealer to defraud the Revenue. According to Section 47, if a dealer creates a charge over his property by way of sale, mortgage, exchange or any other mode of transfer after the tax has become due, then such transfer would be a void transfer. The reason why we are referring to Section 47 is that the phrase therein 'after any tax has become due from him' assumes significance. The same is suggestive of the fact that before the assessment proceedings, or, to put it in other words, before a

particular amount is determined and becomes due to be payable if there is any transfer of property of the dealer, such transfer would not be a void transfer. Therefore, the condition precedent is that the tax should become due and such tax which has become due shall be payable by a dealer. Once this part is over, then Section 48 of the VAT Act would come into play.

75. One of us, J.E. Pardiwala, J., sitting as a Single Judge, had the occasion to consider this issue in the case of *Bank of Baroda, Through its Assistant General Manager Prem Narayan Sharma v. State of Gujarat* Special Civil Application No. 12995 of 2018, decided on 16.09.2019. We may quote the relevant observations made in the said judgment.

"It is preposterous to suggest in the case on hand that as the assessment year was 2012-13, Section 48 could be said to apply from 2012-13 itself. Even in the absence of Section 26E of the SARFAESI Act or Section 31B of the RDB Act, Section 48 of the VAT Act would come into play only after the determination of the tax, interest or penalty liable to be paid to the Government. Only thereafter it could be said that the Government shall have the first charge on the property of the dealer."

76. In view of the aforesaid discussion, We have no hesitation in coming to the conclusion that the first priority over the secured assets shall be of the Bank and not of the State Government by virtue of Section 43 of the VAT Act, 2003." (emphasis supplied)

33.2. In the case ***Jalgaon JantaSahakari Bank Ltd. v. Joint Commissioner of Sales Tax***⁸, the Bombay High Court analysed whether dues accrued by the state government department will take precedence over dues payable to the secured creditor. The High Court, in light of Section 26 -- E of the SARFESI Act, 2002 and Section 31B of the RDDB Act, 1993 held that these acts being a central legislations would take precedence over state legislations pertaining to recovery of dues/tax, ***provided that the secured creditors had registered their charge over the property with CERSAI.*** Bombay High Court held :

⁸ 2022 SCC Online Bom 1767

"73. The 2016 Amending Act also introduced a fresh chapter (Chapter IV-A) in the SARFAESI Act adding four more sections thereto, i.e., sections 26-B to 26-E. The object that the Parliament had in mind while incorporating Chapter IV-A in the SARFAESI Act seems to be clear as crystal. The dominant theme of the additions in the statute were intended to emphasize upon the need to register transactions of securitisation, reconstruction and creation of security interest with the Central registry (hereafter "CERSAI", for brevity) and, accordingly, provisions were made to make such registration mandatory for a secured creditor or other creditor to avail the benefits flowing therefrom, as we would presently proceed to notice.

78. Section 26-E, also beginning with a non-obstante clause, is unambiguous in terms of language, effect, scope and import. A 'priority' in payment over all other dues is accorded to a secured creditor in enforcement of the security interest, if it has a CERSAI registration, except in cases where proceedings are pending under the provisions of the Insolvency and Bankruptcy Code, 2016.

84. The fact that the BST Act and the MVAT Act, which are under consideration, expressly make it subordinate or subservient to any Central legislation creating first charge cannot be ignored. The 2016 Amending Act being of recent origin, the first query that arises in this regard is : **did the Parliament not know that there is a plethora of legislation in the country, both Central and State, that speaks of creation of 'first charge' in favour of a department of the Central/State Government?** The reply cannot but be in the affirmative. The next query that would obviously follow is : **whether the word 'priority' appearing in section 26-E of the SARFAESI Act, i.e., "... paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority" (italics for emphasis by us), was used without a purpose? This reply has to be in the negative.**

85. Priority means precedence or going before (Black's Law Dictionary). In the present context, it would mean the right to enforce a claim in preference to others. **In view of the splurge of 'first charge' used in multiple legislation, the Parliament advisedly used the word 'priority over all other dues' in the SARFAESI Act to obviate any confusion as to inter-se distribution of proceeds received from sale of properties of the borrower/dealer. If a secured asset has been disposed of by sale by taking recourse to the Security Interest (Enforcement) Rules, 2002 it would appear to be reasonable to hold, particularly having regard to the non-obstante clauses in sections 31 B and section 26-E, that the dues of the secured creditor shall have 'priority' over all other including all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.**

90. We may answer the question from a different angle. The RDDB Act and the SARFAESI Act are Central Acts. **If any provision therein is discerned to be seemingly inconsistent with any provision in a State legislation, reconciliation of the same ought to be attempted failing which the Central Acts will prevail over the State legislations, in view of the principle of repugnancy that Article 254 of the Constitution contemplates. Further, section 37 of the MGST Act and section 38C of the BST Act expressly make it subject to the provisions of any Central Act creating 'first charge'. Also, section 26-E of the SARFAESI is a subsequent legislation, as it was notified on 24th January, 2020. Subject to compliance of the terms of Chapter IV-A, section 26-E of the SARFAESI Act would, thus, override any provision in the MGST Act and the BST Act in case of a conflict with the SARFAESI Act."**

(emphasis supplied)

33.3. In a recent judgment of the Gujarat High Court in the case of **Odhavji bhai Mohanbhai Gadhiya Versus State of Gujarat**⁹ the High Court reiterated the settled position of law that the State Tax and VAT Act cannot claim precedence/priority over the dues payable to the secured creditors owing to the Amended Section 26 - E of the SARFESI Act, 2002. It is held:

"5.1 The settled position of law is that the VAT and sales tax dues has no precedence over the dues of the bank for recovery of which the bank exercise powers under the SARFAESI Act. The bank was secured creditor. Section 26 E of the SARFAESI Act provides for priority of secured creditor, stating that notwithstanding anything contained in any other law, after the registration of security interest, the debts due to unsecured creditor shall be paid in priority of all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority. In respect of finance given by the bank to the original owner of the property, security interest was created by mortgaging the property. The debt becoming due to the bank was a secured debt. The charge sought to be created by the sales tax authorities in no way could discount the a priori rights of the bank to recover its dues as the bank was secured creditor."

⁹ [R/SPECIAL CIVIL APPLICATION NO. 9394 of 2021]

5.2 The dues in the nature of sales tax or VAT payable by the original owner cannot claim priority over the dues of the secured creditor. The principle that the state debt or crown debt has no prior claim or the dues payable to the secured creditor is no longer res integra. In Bank of **Bihar vs. State of Bihar** [(1972) 3 SCC 196], the supreme court laid down certain well known principles which were followed by the supreme court in its own judgment in Dena **Bank vs. Bhikhabhai Prabhudas Parekh & Co.** [(2000) 5 SCC 694]. The law laid down is that the preferential right of the Crown to recover the debt over the creditors is limited to the class of unsecured creditors. The common law of England or the principles of equity and good conscience would not allow the Crown to have preferential right for recovery of debt over the mortgagee or pledgee of goods or secured creditors. The law was further settled by the **Supreme Court in Punjab National Bank Vs. Union of India** [(2022) 7 SCC 260] on this score." (emphasis supplied)

34. We are in respectful agreement with the opinion expressed by Gujarat and Bombay High Courts in the above decisions.

35. In **DENA BANK Vs BHIKHABHAI PRABHUDAS PAREKH AND COMPANY AND OTHERS**¹⁰, the Hon'ble Supreme Court has clearly delineated the priority right of the secured creditor. Hon'ble Supreme Court has held as under:-

"However, the Crown's preferential right to recovery of debts over other creditors is confined to ordinary or unsecured creditors. The Common Law of England or the principles of equity and good conscience (as applicable to India) do not accord the Crown a preferential right for recovery of its debts over a mortgagee or pledgee of goods or a secured creditor. It is only in cases where the Crown's right and that of the subject meet at one and the same time that the Crown is in general preferred. Where the right of the subject is complete and perfect before that of the King commences, the rule does not apply, for there is no point of time at which the two rights are at conflict, nor can there be a question which of the two ought to prevail in a case where one, that of the subject, has prevailed already. In *Giles v. Grover* 1832 131 ER 563 it has been held that the Crown has no precedence over a pledgee of goods. In *Bank of Bihar v. State of Bihar & Ors.* AIR 1971 SC 1210, the principle has been recognised by this Court holding that the rights of the pawnee who has parted with money in favour of the pawnor on the security of the goods cannot be extinguished even by lawful seizure of goods

¹⁰ (2000) 5 SCC 694

by making money available to other creditors of the pawnor without the claim of the pawnee being first fully satisfied. Rashbehary Ghose states in Law of Mortgage (T.L.L., Seventh Edition, p.386) It seems a Government debt in India is not entitled to precedence over a prior secured debt." (emphasis supplied)

36. In the **State of M.P and another Vs. State Bank of Indore**¹¹ cited supra Hon'ble Supreme Court held that Section 33-C of Madhya Pradesh General Sales Tax Act, 1958 creates statutory first charge that prevails over any charge that may be in existence. It reads as under:-

"Section 33-C creates a statutory first charge that prevails over any charge that may be in existence. Therefore, the charge thereby created in favour of the State in respect of the sales tax dues of the second respondent prevailed over the charge created in favour of the Bank in respect of the loan taken by the second respondent. There is no question of retrospectivity here, as, on the date when it was introduced, Section 33-C operated in respect of all charges that were then in force and gave sales tax dues precedence over them. This position in law is discussed in detail in the judgment of this Court in Dena Bank v. Bhikhabhai Prabhudas Parekh & Co."

36.1. This judgment of Hon'ble Supreme Court was earlier to Amendment Act, 44 of 2016 where under Section 31-B is inserted in the Act, 1993. Therefore, the said decision cannot come to the aid of the Commercial Tax Department.

37. In **Punjab National Bank Vs Union of India**¹² Hon'ble Supreme Court reviewed law on the subject and held as under:

"43. A Full Bench of the Madras High Court in *UTI Bank Ltd. v. CCE [UTI Bank Ltd. v. CCE]* 2006 SCC OnLine Mad 1182 (FB)], while dealing with a similar issue, has held that : (SCC OnLine Mad paras 25-26)

¹¹ (2002) 10 SCC 441

¹² (2022) 7 SCC 260

"25. In the case on hand, the petitioner Bank which took possession of the property under Section 13 of the SARFAESI Act, being a special enactment, undoubtedly is a secured creditor. We have already referred to the provisions of the Central Excise Act and the Customs Act. They envisage procedures to be followed and how the amounts due to the Departments are to be recovered. *There is no specific provision either in the Central Excise Act or the Customs Act, claiming "first charge" as provided in other enactments, which we have pointed out in earlier paragraphs.*

26. In the light of the above discussion, we conclude,

(i) Generally, the dues to Government i.e. tax, duties, etc. (Crown's debts) get priority over ordinary debts.

(ii) Only when there is a specific provision in the statute claiming "first charge" over the property, the Crown's debt is entitled to have priority over the claim of others.

(iii) *Since there is no specific provision claiming "first charge" in the Central Excise Act and the Customs Act, the claim of the Central Excise Department cannot have precedence over the claim of secured creditor viz. the petitioner Bank.*

(iv) *In the absence of such specific provision in the Central Excise Act as well as in Customs Act, we hold that the claim of secured creditor will prevail over Crown's debts.'*

In view of our above conclusion, the petitioner UTI Bank, being a secured creditor is entitled to have preference over the claim of the Deputy Commissioner of Central Excise, first respondent herein."

(emphasis in original and supplied)

50. In view of the above, we are of the firm opinion that the arguments of the learned counsel for the appellant, on Issue 2, hold merit. Evidently, prior to insertion of Section 11-E in the Central Excise Act, 1944 w.e.f. 8-4-2011, there was no provision in the 1944 Act inter alia, providing for first charge on the property of the assessee or any person under the 1944 Act. **Therefore, in the event like in the present case, where the land, building, plant, machinery, etc. have been mortgaged/hypothecated to a secured creditor, having regard to the provisions contained in Sections 2(1)(zc) to (zf) of the SARFAESI Act, 2002, read with provisions contained in Section 13 of the SARFAESI Act, 2002, the Secured Creditor will have a first charge on the secured assets. Moreover, Section 35 of the SARFAESI Act, 2002 inter alia, provides that the provisions of the SARFAESI Act, shall have overriding effect on all other laws. It is further pertinent to note that even the provisions contained in Section 11-E of the Central Excise Act, 1944 are subject to the provisions contained in the SARFAESI Act, 2002.**

51. Thus as has been authoritatively established by the aforementioned cases in general, and *Union of India v. SICOM Ltd.* [*Union of India v. SICOM Ltd.*, 2009(2) SCC 121] in particular, the provisions contained in the SARFAESI Act, 2002, even after insertion of Section 11-E in the Central Excise Act, 1944 w.e.f. 8-4-2011, will have an overriding effect on the provisions of the 1944 Act.

53. Further, the contention that in the present case, the confiscation proceedings were initiated almost 8-9 years prior to the charge being created in respect of the very same properties in favour of the bank is also inconsequential. The fact that the charge has been created after some time period has lapsed post the initiation of the confiscation proceedings, will not provide legitimacy to a confiscation order that is not rooted in any valid and existing statutory provision."

(Emphasis supplied)

38. Thus, the secured creditor shall have precedence to recover its dues from the secured asset over claims of a State Government to recover taxes. It is therefore open to the petitioner-bank to take such measures as required to recover the amounts due from the secured asset.

39. Having regard to the law on the subject, the Recovery Officer-I in Debts Recovery Tribunal-II, Hyderabad grossly erred in not granting relief claimed in M.P.No.21 of 2018 in R.A.No.1874 of 2017 in O.A.No.286 of 2017. The Debts Recovery Tribunal-II, Hyderabad also grossly erred in dismissing the Recovery Appeal No.6 of 2018. Said orders are set aside and W.P.No.42450 of 2018 is allowed. We hold that the bank is entitled to seek enforcement of the order of Recovery Officer-I, Debts Recovery Tribunal-II, Hyderabad made in O.A.No.286 of 2017 dated 25.3.2017.

40. We also hold that the action of first respondent dated 30.11.2016 attaching the property mortgaged to the petitioner bank, issuing auction

sale notice dated 3.7.2018 and conducting auction of secured asset is ex-facie illegal and without jurisdiction and competence and they are accordingly set aside and the W.P.No.41691 of 2018 is allowed.

41. It is made clear that if the secured assets are likely to yield more money than the actual money due to the bank, after adjusting the amounts due to the bank, the balance amount shall be credited to the account of the State and respondent Nos.1 and 2 shall be updated about the measures taken by the bank and the amounts secured by them on the secured assets.

42. In the result, Writ Petition Nos.41691 of 2018 and 42450 of 2018 are allowed. Miscellaneous applications, if any pending, shall stand closed.

**That Rule Nisi has been made Absolute as above witness
the Hon'ble The Chief Justice SRI. UJJAL BHUYAN, on this TUESDAY, THE
THIRTEENTH DAY OF JUNE
TWO THOUSAND AND TWENTY THREE**

**SD/- MOHD. SANAULLAH ANSARI
ASSISTANT REGISTRAR**

//TRUE COPY//

SECTION OFFICER

**One Fair Copy to the Hon'ble Sri Justice P.NAVEEN RAO
(For His Lordships Kind Perusal)**

AND

**One Fair Copy to the Hon'ble Sri Justice NAGESH BHEEMAPAKA
(For His Lordships Kind Perusal)**

To,

1. The Deputy Commercial Tax Officer Jogipet Unit, Office of Medak Circle Nizamabad Division.
2. The Deputy Commercial Tax Officer Begumpet Circle, Begumpet Division Hyderabad.
3. The Managing Director M/s Vijlak Pharma Limited, D.No.7-1-54/1, Flat No.204, Sai Satya Residency Ameerpet, Hyderabad-500016.
4. The Principal Secretary The State of Telangana Commercial Tax Department Secretariat, Hyderabad.
5. One CC to Sri. M. Srinivas, Advocate [OPUC]
6. Two CCs to GP for Commercial Tax (TG), High Court for the State of Telangana. [OUT]

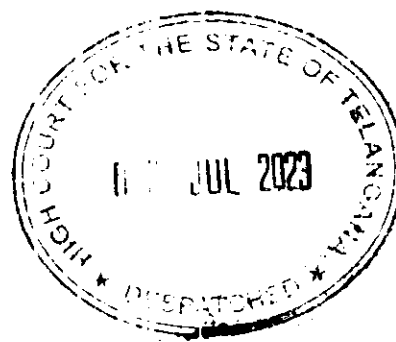
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8. The Under Secretary, Union of India Ministry of Law, Justice and Company Affairs. New Delhi.
9. The Secretary, Telangana Advocates Association Library High Court Buildings, Hyderabad.
10. Two CD Copies

T J
GJP

[Handwritten signature]

HIGH COURT

DATED:13/06/2023



COMMON ORDER

WRIT PETITION NOS: 41691 AND 42450 OF 2018

ALLOWING THE WRIT PETITION NOS. 41691 OF
2018 AND 42450 OF 2018

WITHOUT COSTS.

(20) VW
28/6/23