2024:BHC-NAG:8093-DB

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO. 3401 OF 2022
(State Bank of India ..vs.. Government of Maharashtra, through its Finance Department, Mumbai and others)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. S.N. Kumar, Counsel for the petitioner,
Mr. S.M. Ghodeswar, AGP for respondent Nos.1 to 3,
Mr. S.M. Pande, Counsel for respondent No.4.

**CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**
DATED : 29-07-2024

Heard the learned Counsel appearing for the parties.

2. The challenge in the petition is to the communications dated 15-1-2020 (Annexure-10), 16-9-2021 (Annexure-13) and 22-12-2021 (Annexure-15).

3. Vide impugned communications, respondent No.2 has informed the petitioner that at the time of auction of the mortgaged property the dues under the Maharashtra Value Added Tax, 2002 must be given top priority.

4. It is also claimed by the said respondent that while recovering the dues by the petitioner, the dues under the head of Value Added Tax be also recovered.

5. It is the contention of the petitioner that the issue as to the first charge will be that of financial institution, is no more *res integra*.

6. The aforesaid view is informed to have been based on the Full Bench judgment of this Court in the matter of ***Jalgaon Janta Sahakari Bank Ltd. and Another v. Joint Commissioner of Sales Tax Nodal 9, Mumbai, (2022) 5 Mah.L.J. 691.***

7. As against above, Mr. S.M. Ghodeswar, learned Assistant Government Pleader has claimed that the view expressed by the Division Bench of this Court at Principal Seat in the matter of ***State Bank of India v. The State of Maharashtra, 2021(2) Mh.L.J.721*** is also required to be appreciated. Mr. S.M. Ghodeswar would further add that in case if the dues which are receivable by the petitioner are satisfied from the auction of the property, the surplus can be made over the respondent towards satisfying the Value Added Tax liability.

8. We have considered the aforesaid submissions.

9. It can be inferred from the factual matrix of the present case that the issue is covered by the Full Bench judgment of this Court in the matter of *Jalgaon Janta Sahakari Bank Ltd. and Another* referred above. In the said judgment, the Division Bench judgment of this Court in the matter of *State Bank of India* is also dealt with.

10. In the aforesaid background, the contention that the petitioner will have to be priority charge over the mortgaged property needs to be accepted.

11. However, considering the submissions made by Mr. S.M. Ghodeswar, it can be safely recorded that in case, if such amount is received after satisfying the liability of the petitioner financial institution, the petitioner can make over the said amount towards the satisfaction of the tax liability to respondent No.2. The undertaking to that effect provided by the petitioner on affidavit reads thus-

> *"1. That the respondent Nos.1 and 2 have although opposed the petition by filing affidavit in reply dated 24-4-2024, however, they have relied upon the judgment dated 21-3-2024 passed by this Hon'ble Court in Writ Petition No.11733/2023, Indian Overseas Bank Vs. Deputy Commissioner of State Tax, GST Department and in particular, the direction/declaration in paragraph no.37(d), which is as under :*
>
> > *"d) If the sale of the Secured Assets realizes any amount in excess of the amounts owed by the Borrower to the Petition-led consortium of banks, the MVAT Authorities may make a claim for such residual excess amount towards the dues owed by the Borrower to the MVAT Authorities."*
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> *2. The petitioner Bank has no objection if the similar direction as reproduced hereinabove is given in the present writ petition while holding that the petitioner Bank has the first priority in respect of enforcement against the secured asset and directing for removal of mutation entries to mark an encumbrance in favour of the MVAT Authority from the land records in respect of non-agricultural industrial plot bearing Survey No.33/1, PH No.46,*

Mouza Takalkheda, Tahsil Maregaon, District Yavatmal."

12. That being so, we allow the petition in terms of prayer clause (a) subject to the aforesaid undertaking.

13. The consequential action be taken by the revenue authorities for modification of the charge in the revenue record.

(ABHAY J. MANTRI, J.) **(NITIN W. SAMBRE, J.)**

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