BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.09.2025**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

W.A.(MD)No.2599 of 2025
and
C.M.P(MD)No.14920 of 2025

The Commissioner of GST and Central Excise,
Dindigul Range,
Dindigul. ...Appellant

/Vs./

1.M/s.Indian Overseas Bank,
Represented by its Authorised Officer,
Regional Office, Plot No.40,
80 Feet Road, Anna Nagar,
Madurai-625 020.

2.The Sub Registrar,
Naagal Naicken Patti,
Dindigul.

3.Gunaseelan Mhalingam
4.Raja
5.Sakthivel
6.Shanmugasundaram Kanthasamy ... Respondents

PRAYER:- Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 25.11.2024 made in W.P.(MD)No.14358 of 2024.

For Appellants : Mr.R.Gowrishankar

For R1 : Mr.C.Deepak

For R2 : Mr.G.V.Vairam Santhosh
Additional Government Pleader

For R3 : Mr.P.Athimoolapandian

JUDGMENT

(Delivered by DR.ANITA SUMANTH, J.)

We have heard Mr.R.Gowrishankar, learned counsel for the appellant, Mr.C.Deepak, learned counsel for R1, Mr.G.Vairam Santhosh, learned Additional Government Pleader for R2 and Mr.P.Athimoolapandian, learned counsel for R3.

2. W.P.(MD).No. 14358 of 2024 was filed by Indian Overseas Bank seeking a mandamus directing the Sub-Registrar, Dindigul to delete the entry in respect of attachment, made by the Commissioner, GST and Central Excise on 24.03.2003 in Document No.12/03 and consequential release of sale certificate dated 07.03.2024.

3. No counters have been filed by any of the respondents in the writ petition. The writ petition came to be disposed on 25.11.2024 by the Writ Court. The Court notes that a loan had been obtained by certain entities (not arrayed as parties) by creating a mortgage by Memoranda of

Deposit (MOD) of three title deeds dated 03.11.2010, 13.01.2011 & 09.05.2015 relating to the property at S.Nos.900/1F, 900/1E, 899, 900/1F, 898/1B, 898/3, 901/6, 901/7, 901/8, 408/3A, 982/3C, 982/3D, 982/3A2, 1026/2B, 978/2E, Adiyanoothu Village, Dindigul Taluk, Dindigul Registration District and Dindigul Nagalnaickenpatti Sub Registration. (properties/properties in question).

4. Since there were defaults in repayment, the accounts were declared as Non-Performing Assets (NPA) on 30.09.2015 and proceedings were initiated under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act'). Symbolic possession of the properties covered by MOD were taken and the properties were brought for e-auction.

5.The private respondents in the writ petition were the successful auction purchasers. The properties was sold in auction and a sum of Rs.4,23,30,000/- has been paid by the successful auction purchasers. Sale certificate has also been issued.

6. The Writ Petition was instituted by the bank on 24.06.2024 for the prayer set out in the paragraph 1 supra and after hearing all learned counsel, including learned counsel for the Central Excise

Department, orders were passed on 25.11.2024, allowing the writ petition in light of Section 26E of the SARFAESI Act wherein priority of charge has been given to secured creditors. Pursuant thereto, sale certificate has also been issued to the auction purchasers.

7. Section 26E is extracted below:-

> ***26E. Priority to secured creditors**.—Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.*

8. The appellant argues that Section 26E has been inserted only vide amendment Act of 2020 and hence will not have retrospective effect, to obviate a charge held by the Central Excise Department of an anterior date. Section 26E would hence have no relevance as far as prior registration charges are concerned.

9. Per contra, learned counsel appearing for the Bank would reiterate that Section 26E was inserted with a view to protect the interest of secured creditors, particularly since public money is involved. Drawing attention to the provisions of Section 26E, he would point out that the Section commences with a non-obstante clause and protects all

secured debts due to the banks in priority over other debts, including revenue taxes, cess and rates payable to the Central or the State Governments or the local authorities. In such circumstances, he would submit that there is nothing untoward in the order of the Writ Court.

10. Learned counsel appearing for the auction purchasers would point out that much water has flown under the bridge after the order of the writ court and sale certificate has also been issued and registered. as early as in March, 2025. It is hence too late in the day for the clock to be put back and being a bonafide auction purchasers, their interest should not be disturbed.

11. Having heard all learned counsel and perused the material papers, we are of the considered view that this appeal is devoid of merit. It is true that a question of law arises in the writ petition as to whether operation of Section 26E would be prospective or retrospective also, in relation to charges that are anterior to that date.

12. The respondents claim to be bonafide purchasers, who have responded to the call for auction and paid valuable consideration for the property. Learned counsel for the Appellant, for his part, alleges that the pledging of the property as collateral was collusive insofar as the properties that were originally offered to the Central Excise Department

had been transferred to by the assessee, one Angu Parameswari Textiles, to a relative who then pledged the same with the bank.

13. To be noted that these factual assertions are nowhere part of the record. The Revenue has chosen not to file counter before the writ court and the facts, as set out in the writ affidavit thus, pass as uncontroverted.

14. The dates assume some significance in this matter. Per the writ affidavit, the charges in favour of the Bank were created and registered on 03.11.2010, 13.01.2011 & 09.05.2015. The auction of the properties was conducted on 09.02.2024 and the sale confirmed in favour of the purchasers on 07.03.2024. Registration of the sale certificate was on 12.03.2025.

15. The present appeal was belated and came up for admission only after condonation of delay by which time the purchasers have already acquired title. The Department has certainly been lax in availing appropriate remedial measures, and in a timely manner.

16. In the absence of a counter from their side, we are unaware of when a statutory demand of GST dues was raised on the purchasers and whether at all the appellant had registered a charge in respect of the properties in respect of that demand. The question of undoing the sale in

favour of the purchasers in these proceedings does not, therefore, arise. Let the Appellant approach the civil court seeking appropriate remedy, if so advised.

17. In light of the discussion as aforesaid, this writ appeal is dismissed. No costs. Connected miscellaneous petition is closed.

[A.S.M.J.,] [C.K.J.,]
11.09.2025

Index:Yes/No
Neutral Citation : Yes/No
ssm

To

The Sub Registrar,
Naagal Naicken Patti,
Dindigul.

DR.ANITA SUMANTH, J.
AND
C.KUMARAPPAN, J.

ta/ssm

W.A.(MD)No.2599 of 2025

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