

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.01.2025

Pronounced on: 16.04.2025

**THE HON'BLE DR.JUSTICE ANITA SUMANTH
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN**

W.P.Nos.31572 & 31573 of 2002

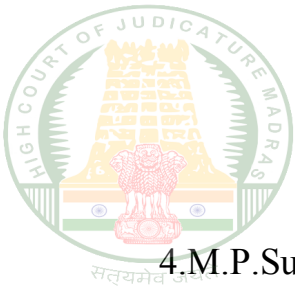
WP.No.31572 of 2002

Indian Bank,
Kilpauk Branch,
rep. by its Assistant
General Manager,
Mr.P.G.Pande,
Of its Circle Office,
Chennai North, Chennai.

... Petitioner

Vs.

- 1.The Commercial Tax Officer,
Ambattur Assessment Circle,
Chennai – 600 049.
- 2.Shree Ragavendra Engineering Industries,
rep. by its Partners,
L-53, Ambattur Industrial Estate,
Chennai – 600 058.
- 3.R.Dakshninamoorthy,
Proprietor,
Shree Ragavendra Engineering Industries,
L-46, Ambattur Industrial Estate,
Chennai – 600 058.



4.M.P.Sukumaran,
Partner,
Shree Ragavendra Engineering Industries,
L-46, Ambattur Industrial Estate,
Chennai – 600 058.

... Respondents

Prayer in WP.No.31572 of 2002: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari, calling for the records relating to the proceeding bearing No.RC 3349/2000 A3 dt. 6.12.2001 and 'B 6' notice bearing No.3349/2000 dated 06.12.2001 of the 1st respondent and consequential order bearing Rc.3510/99 A3 dated 08.03.2002 of the 1st respondent and quash the same.

AND

WP.No.31573 of 2002

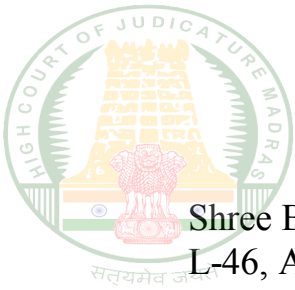
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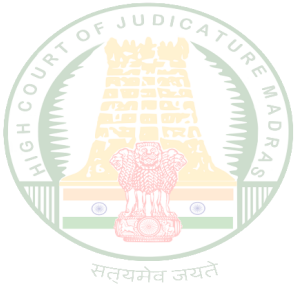
Prayer in WP.No.31573 of 2002: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari, calling for the records relating to RC 3349/2000 A3 dt. 6.12.2001 and ‘B 6’ notice bearing No.3348/2000 dated 06.12.2001 of the 1st respondent and consequential order bearing Rc.3510/99 A3 dated 08.03.2002 of the 1st respondent and quash the same.

For Petitioner : Mr.Jayesh B.Dolia, Senior Counsel
For M/s.Aiyar & Dolia
(in both WPs)

For Respondents : Mr.Haja Nazirudeen,
Additional Advocate General
Assisted by
Mr.G.Nanmaran, (for R1)
Special Government Pleader
(in both WPs)

(in WP.No.31572 of 2002)
R2 and R4 – Struck off vide
order dated 21.8.2012
R3 - Dismissed vide
order dated 21.8.2012

(in WP No.31573 of 2002)
R2 – Struck off vide
order dated 27.1.2006



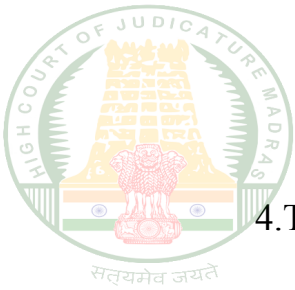
COMMON ORDER

WEB COPY [Order of the Court was delivered by **Dr.ANITA SUMANTH, J.**]

WP.No.31572 of 2002 has been filed by the Indian Bank challenging proceedings dated 06.12.2001 of the Commercial Tax Officer, notices in Form B-6, also dated 06.12.2001 and a show cause notice dated 08.03.2002. The aforesaid documents have been issued by authorities of the Commercial Taxes Department and relate to arrears of sales tax of one Shree Ragavendra Engineering Industries (arrayed as R2 to R4 in WP.No.31572 of 2002).

2.The prayer in W.P.No.31573 of 2002 is also in respect of proceedings dated 06.12.2001 and a notice in Form B-6, also of even date, issued in respect of sales tax arrears in terms of the Tamil Nadu General Sales Tax Act, 1959 (in short 'TNGST Act'/'Act') of one Shree Balajee Industries (arrayed as R2 in WP.No.31573 of 2002). R2 in W.P.No.31573 of 2002 and R2 to R4 in W.P.No.31572 of 2002 are collectively referred to as 'assesseees'.

3.We have heard Mr.Jayesh B.Dolia, learned Senior Counsel for M/s.Aiyar and Dolia, appearing for the writ petitioner and Mr.Haja Nazirudeen, learned Additional Advocate General assisted by Mr.G.Nanmaran, learned Special Government Pleader for the Commercial Taxes Department. The assesseees are not represented, though service is complete.

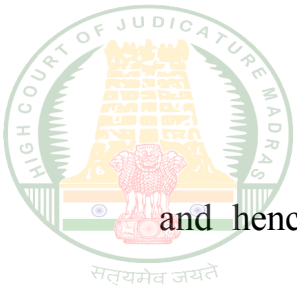


4.The petitioner is a Nationalised Bank and had sanctioned secured overdraft facilities to the assessee in WP.No.31573 of 2022, and a loan to the assessee in WP.No.31572 of 2002. On 14.08.1990, as a collateral, the assessee created an equitable mortgage over their half undivided share of the land admeasuring 1 ground and 2105 sq. ft., together with building situated thereupon at Western Row of 103, New Avadi Road, Plot No.A-45, Survey No.77/5, Kilpauk, Chennai ('property'/property in question') by deposit of title deeds.

5.Documents of title were deposited with the petitioner in the Kilpauk Branch on 29.01.1991 and the creation of equitable mortgage was confirmed under letter dated 30.01.1991. The bank had been a tenant of the assessee, occupying a portion in the basement, ground and first floors of the property in question, admeasuring 4,676 sq. ft.

6.A lease deed was signed on 20.05.1992 and the lease rent had been fixed at a sum of Rs.36,715.50/- payable equally to the 3rd and 4th respondents, who are partners in R2 firm. The partners had, vide communication dated 31.12.1991, authorised the petitioner to adjust the monthly rent in full towards the dues payable by the assessee to the petitioner bank.

7.While this is so and the aforesaid arrangement had continued since 1991, the bank was in receipt of notices in Form B-6 issued under Section 26 of the Act. The notice was to the effect that the assessee were in arrears of sales tax



and hence any money which is either due or that may become due to the petitioner from the defaulting assessee or any money held by the petitioner on account of the defaulting assessee is required to be paid forthwith to the Sub-Treasury Officer in favour of the Commercial Tax Officer.

8.The demand was made under threat, that failure of compliance will amount to a charge on the properties of the petitioner, which will be recovered as an arrear qua land revenue. The bank communicated with the Commercial Tax Authorities intimating them that the defaulting assesseees had availed credit facilities from the bank and were defaulters also in respect of those credit facilities, vide letter dated 02.01.2002.

9.In response to the impugned B-6 notices, the Commercial Taxes Department was informed that a case had been filed by the bank before the Debt Recovery Tribunal, Chennai (in short, DRT, Chennai) for recovery of the amounts loaned. The Department was also informed that the lease rentals that were payable by the bank for occupation of the property in question were being credited towards the outstanding of the defaulting assesseees.

10. The Commercial Taxes Department was assured by the bank that as and when the demands of the bank were fully settled, any amount over and above the same would be paid over to the Department, if their demand still subsisted. This was followed by the impugned show cause notice dated 08.03.2002



reiterating the demands under B-6 notices and calling upon the bank to remit the lease rentals prior to 18.03.2002 under threat of legal action.

11.A reply was sent on 16.03.2002 reiterating the contents of letter dated 02.01.2002 that the lease rentals were being adjusted towards partial discharge of mortgage. The bank, in addition added, that it stood in the vantage position of a secured creditor, having a paramount charge over the mortgaged properties. Since the Commercial Taxes Department proceeded to insist on the demands, the present writ petitions have come to be filed.

12.The petitioner relies on the following judgments:

- (i) *Punjab National Bank v. Union of India and Others*¹
- (ii) *Union of India and Others v. SICOM Limited and Another*²
- (iii) *UTI Bank Ltd., 82 Dr.Radhakrishnan Salai, Chennai 600 004 v. The Deputy Commissioner of Central Excise Chennai II Division R.40 TNHB Complex Mogappair Chennai 600 037*³
- (iv) *R.M.Arunachalam v. Commissioner of Income Tax, Madras*⁴

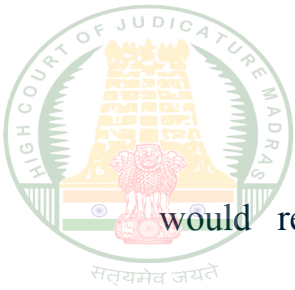
13. We are given to understand that the properties in question have been auctioned pursuant to the continuing defaults of the assesseees and the amounts appropriated towards the outstanding loan account. In this context, Mr.Dolia

¹ (2022) 7 SCC 260

² (2009) 2 SCC 121

³ 2007-1-L.W. 50

⁴ (1997) 7 SCC 698



would rely on the provisions of Section 26E of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act'), in terms of which, financial institutions and secured creditors hold priority of charge over all other creditors in respect of the outstanding dues. In fine, the prayer of the writ petitioner is for allowing of the writ petitions and quashing of the impugned communications.

14.The Commercial Taxes Department would, for its part argue that it holds priority of charge in respect of the mortgaged properties. Learned Additional Advocate General would rely on various provisions of the TNGST Act reiterating that it is the Crown that would hold first charge over outstanding dues. He specifically refers to the provisions of Section 26 which deals with creation of charge. He also relies on the following judgments of the Supreme Court to substantiate his arguments:-

(i)*State Tax Officer v. Rainbow Papers Limited*⁵

(ii)*KSL and Industries Limited v. Arihant Threads Limited and Others*⁶

(iii)*Central Bank of India v. State of Kerala and Others*⁷

(iv)*Central Bank of India v. State of Tamil Nadu and Another*⁸

⁵(2023) 9 SCC 545

⁶(2015) 1 SCC 166

⁷ (2009) 4 SCC 94

⁸ 1997 SCC OnLine Mad 637



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(v) *United Bank of India v. Official Liquidator and Others*⁹

(vi) *Union of India and Another v. G.M.Kokil and Others*¹⁰

15. Having heard both learned counsel in detail and perused the case papers, our decision is as under.

16. The dates and events in this matter are important in order to decide the question of priority of charge. Luckily, the dates and events are admitted and there is no dispute on the position that the overdraft facility and loan had been sanctioned to the assessee by the bank in 1990. The creation of equitable mortgage over the land and building by the assessee was on 29.01.1991 and the communication confirming the creation of equitable mortgage had been executed on 30.01.1991. Simultaneous therewith, the petitioner bank has been in occupation of 4,676 sq. ft. of the property in question.

17. In order to obviate any possibility of the lease being collusive to defeat the interests of the Commercial Taxes Department, we had sought documents from the petitioner to establish that their occupation of the property in question was even prior to 06.12.2001, which is the date of impugned B-6 notices under compilation dated 12.12.2024 filed by the Commercial Taxes Department. The Department has enclosed 13 documents, which includes a letter dated 31.12.1991 addressed by one of the defaulting assessee to the petitioner and

⁹ (1994) 1 SCC 575

¹⁰ 1984 (Supp) SCC 196

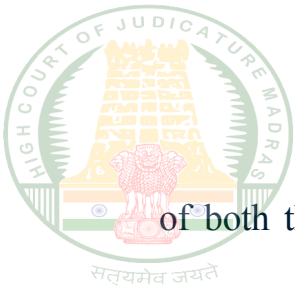


lease dated 20.05.1992 executed between the defaulting assessee and the petitioner bank. Thus, these documents are part of the records of the Commercial Taxes Department.

18. We had also called for the records of the DRT and DRAT Chennai. The original application before the Debt Recovery Appellate Tribunal, Chennai (DRAT) in O.A.No.1046 of 2000 makes reference to the lease deed between the bank and the defaulting assessees. Hence, it is a fact that the lease rent payable by the bank was being adjusted towards the outstandings of the defaulters. These payments are not in dispute and this position would hence serve to establish the legitimacy of the stand of the bank before us in these writ petitions.

19. In letter dated 31.12.1991, the defaulting assessees have categorically authorised that the rent payable by the bank be credited against the overdraft accounts to reduce the burden on repayment. This was an on-going arrangement and the bank has been authorised to credit the rent payable till the excess in the accounts are adjusted. This is the arrangement that had been proposed to regularise the overdraft accounts.

20. The bank was a tenant per lease deed dated 20.05.1992 and had agreed to the arrangement proposed by the defaulter for settlement of the overdue accounts. The arrangement is evidently a legitimate one to balance the interests



of both the parties. The bank has ultimately purchased the property in auction and is stated to be currently occupying the same as owner of the property.

21. The records make it clear that this arrangement has been on-going since December 1991. The impugned notices/communications have been issued only in December 2002 and hence, the arrangement between the bank and the defaulters was already in place for more than a decade when the impugned notices were received. On a careful perusal of the records of the Commercial tax Department as well as DRT/DRAT, we conclude that the available documents establish the legitimacy of the factual position of the bank in these writ petitions.

22. We now advert to the legal position to decide the question of priority of charge. Section 26E of the SARFAESI Act, that the bank relies upon, reads as follows:

'26-E 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, cases and other rates payable to the Central Government or State Government or local authority.

Explanation.- For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.'



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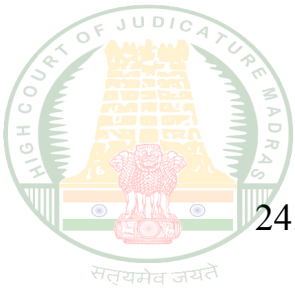
23. Per contra, learned AAG has referred to Section 24 of the TNGST Act and the relevant portions thereof, are extracted below:

'Section 24. Payment and recovery of tax.- (1) Save as otherwise provided for in sub-section(2) of section 13, the tax assessed or has become payable under this Act from a dealer or person and any other amount due from him under this Act shall be paid in such manner and in such installments, if any, and within such time as may be specified in the notice of assessment, not being less than twenty-one days from the date of service of the notice. The tax under sub-section (2) of section 13 shall be paid without any notice of demand. In default of such payments the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax or interest under this Act.

(2) Any tax assessed on or has become payable by, or any other amount due under this Act from a dealer or person and any fee due from him under this Act, shall, subject to the claim of the Government in respect of land revenue and the claim of the Land Development Bank in regard to the property mortgaged to it under Section 28(2) of the Tamil Nadu Co-operative Land Development Banks Act, 1934 (Tamil Nadu Act X of 1934), have priority over all other claims against the property of the said dealer or person and the same may without prejudice to any other mode of collection be recovered:-

(a) as land revenue; or

(b) on application to any Magistrate by such Magistrate as if it were a fine imposed by him'



24. The bank has also referred to and relied upon Section 34 of the Recovery of Debts and Bankruptcy Act, 1993 (in short 'RDB Act') and Section 37 of the SARFAESI Act, both reading respectively, as follows:

'RDB Act

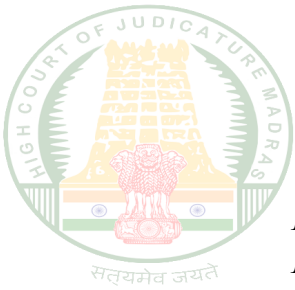
34. Act to have overriding effect (1) Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963) [Now see the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002).], the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), [the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989).

SARFAESI ACT

37. Application of other laws not barred. - The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force.

Objects and Reasons – Clause 37.- This clause provides that the provisions of the proposed legislation or the rules made thereunder shall be in addition to, and not in derogation of the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities and

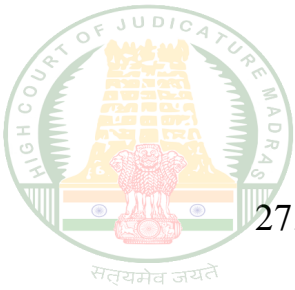


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Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or any other law for the time being in force.

25. Section 34 states that the RDB Act shall have overriding effect in respect of any other law for the time being in force. Section 37 of the SARFAESI Act states that application of other laws is not barred and states that the SARFAESI Act and Rules shall be in addition to, and not in derogation of various Acts, such as the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 (SEBI Act), the RDB Act or any other law for the time being in force. Thus, we note that the application of the SARFAESI Act is concurrent with, and not overriding the provisions of other enactments.

26. Be that as it may, as far as the question of priority is concerned, Section 26E of the SARFAESI Act is a specific provision which states that notwithstanding anything contained in any other law for the time being in force and after the registration of security interest, it is the debts due to the secured creditor that shall have priority over all other debts and revenues, including those payable to the Central or State Government or local authority. Hence, as far as SARFAESI Act is concerned and with respect to the question of priority, it is Section 26E, which is a specialized section, that would apply. The provisions of Section 34 of the RDB Act are, by contrast, general in nature.



27. Thus, in the juxtaposition of Section 26E of the SARFAESI Act with Section 34 of the RDB Act, it is Section 26E of the SARFAESI Act that will provide the necessary impetus for determining the priority of a charge of security interest in favour of the Financial Institution, as Section 34 of the RDB Act is, by comparison, only a general provision.

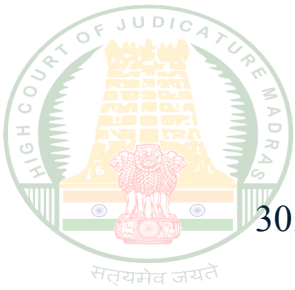
28. In *G.M.Kokil*¹¹, dealing with the Factories Act, 1948, the Court dealt with the purpose of a non-obstante clause stating that a non-obstante clause is a legislative device usually employed to give overriding effect to certain provisions over other contrary provisions either found in the same enactment or some other enactment so as to avoid the operation and effect of such contrary provisions. The ratio of the judgment in *G.K.Kokil*¹² would, in our view, enure to the benefit of the writ petitioner.

29. In *Punjab National Bank*¹³, the Supreme Court was dealing with an appeal from a decision of the Allahabad High Court. The rival claims in that case were between a Nationalised bank and the Central Excise Department. The Court sets out certain principles on the question of priority between Government dues and Crown debts.

¹¹ Foot Note Supra (10)

¹² Foot Note Supra (10)

¹³ Foot Note Supra (1)



30. After noticing and dealing with the cases in *UTI Bank Ltd.*¹⁴, *Union of India and Others*¹⁵, affirmed in *CCE v. UTI Bank Limited*¹⁶, *Dena Bank v. Bhikhabhai Prabhudas Parekh & Co.*¹⁷, *Central Bank of India v. Siriguppa Sugars and Chemicals Limited*¹⁸ and *Krishna Lifestyle Technologies Limited v. Union of India*¹⁹ (appeal filed by the Union dismissed in *Union of India v. Krishna Life Style Technologies Limited*²⁰) the Supreme Court has crystalized the following guidelines:

'Issue 2:

.....

(i) Generally, the dues to Government i.e. tax, duties, etc. (Crown's debts) get priority over ordinary debts. 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 of recovery of its debts over a mortgage or pledge of goods or a secured creditor.

(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 secured creditors.

(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.

¹⁴ Foot Note Supra (3)

¹⁵ Foot Note Supra (2)

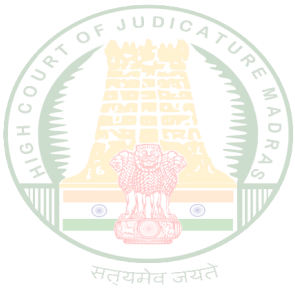
¹⁶ 2009 SCC OnLine SC 1950

¹⁷ (2000) 5 SCC 694

¹⁸ (2007) 8 SCC 353

¹⁹ 2008 SCC OnLine Bom 137

²⁰ 2009 SCC OnLine SC 1952



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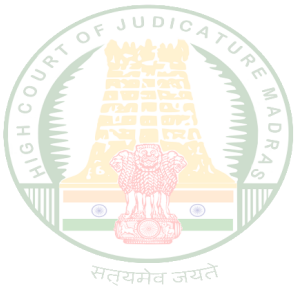
(iv) In the absence of such specific provision in the Central Excise Act as well as in the Customs Act, it is held that the claim of secured creditor will prevail over Crown's debts.'

31. The appeal of the bank thus came to be allowed. The question of priority of debt was decided in *SICOM*²¹ holding that generally a debt which is secured by the provisions of a Statute fastens a first charge over the property concerned and must prevail over crown debts that are unsecured. The Bench holds as follows:

'9. Generally, the rights of the Crown to recover the debt would prevail over the right of a subject. Crown debt means the "debts due to the State or the King; debts which a prerogative entitles the Crown to claim priority for before all other creditors". [See Advanced Law Lexicon by P. Ramanatha Aiyar (3rd Edn.) p. 1147]. Such creditors, however, must be held to mean unsecured creditors. Principle of Crown debt as such pertains to the common law principle. A common law which is a law within the meaning of Article 13 of the Constitution is saved in terms of Article 372 thereof. Those principles of common law, thus, which were existing at the time of coming into force of the Constitution of India are saved by reason of the aforementioned provision. A debt which is secured or which by reason of the provisions of a statute becomes the first charge over the property having regard to the plain meaning of Article 372 of the Constitution of India must be held to prevail over the Crown debt which is an unsecured one.

10. It is trite that when Parliament or a State Legislature makes an enactment, the same would prevail over the common law. Thus, the common law principle

²¹ Foot Note Supra (2)



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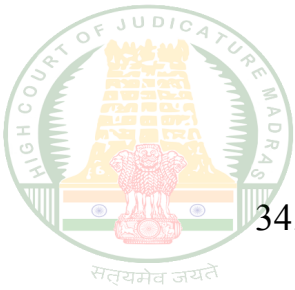


which was existing on the date of coming into force of the Constitution of India must yield to a statutory provision. To achieve the same purpose, the Parliament as also the State Legislatures inserted provisions in various statutes, some of which have been referred to hereinbefore providing that the statutory dues shall be the first charge over the properties of the taxpayer. This aspect of the matter has been considered by this Court in a series of judgments.

32. Hence, it follows that in according to the priority of settlement of debts, it is relevant to take note of the precise language deployed in the rival statutes at play. An early decision on this issue is of the Full Bench of this Court in *UTI Bank*²², affirmed by the Supreme Court in *Civil Appeal No. 3627 of 2007* vide judgment dated 12.02.2009, where the Court notices that there is no specific provision under the Central Excise Act in terms of which the Central Excise Department could claim a first charge under that enactment. Hence, the claim of the Central Excise Department cannot have precedence over the claim of a secured creditor.

33. Applying the above rationale to the present matter, the attachment made under Form No.5 (Notice of attachment) on 08.07.2008 cannot take precedence over the mortgage created by deposit of title deeds on 14.08.1990 and confirmed in 1991.

²² Foot Note Supra (3)



34. The cases cited by the Revenue are now discussed. In the case of *Rainbow Papers*²³, the Supreme Court considered the interplay of demands under Section 48 of the Gujarat Value Added Tax Act and the mechanism set out under Section 53 of the Insolvency and Bankruptcy Code, 2016 (Code). The Supreme Court noted that Section 53 of the Code began with a non obstante clause which read that notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature, the proceeds from the sale of liquidation assets shall be distributed in the order of priority that was set out under Section 53 itself.

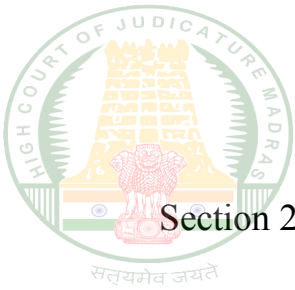
35. They concluded that Section 48 of the Gujarat Value Added Tax Act was not contrary to or inconsistent with Section 53 or any other provisions of the IBC and that the demands under the Gujarat Value Added Tax Act could be enforced by the Commercial Taxes Department as a secured creditor. Hence, the appeals of the Commercial Taxes Department were allowed in the specific context of the provisions of the Gujarat Value Added Tax Act, which stipulated that the demands under that Act would be a first charge over the property.

36. In *United Bank of India*²⁴, the case dealt with the claim of the Official Liquidator, and the facts and legal position discussed there are not apposite to the present matter. In *Central Bank of India*²⁵, this Court considered a challenge to

²³ Foot Note Supra (5)

²⁴ Foot Note Supra (9)

²⁵ Foot Note Supra (8)



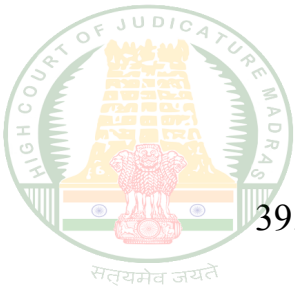
Section 24(2) of the TNGST Act. The Court rejected that plea on the ground that

Section 24(2) was not inconsistent with the provisions of the Transfer of Property Act, 1882. That case will have no bearing on the aspect of priority of charge as it only dealt with a challenge to constitutionality of the provision itself.

37. In the case of *State of Kerala*²⁶, three Hon'ble Judges of the Supreme Court considered a challenge to the non obstante clause in Section 38-C of the Bombay Sales Tax Act, 1959 and Section 26-B of the Kerala General Sales Tax Act, 196, both of which created first charges on the property of a dealer or person liable to pay sales tax. The challenge was on the ground of inconsistency with non obstante clause in Section 34(1) of the RDB Act and Section 37 of the SARFAESI Act.

38. The appeals of the bank were dismissed, the Supreme Court agreeing with the orders of the Kerala and Bombay High Courts that the statutory first charge created by and under the Bombay and Kerala Acts would hold primacy over the rights of the bank to recover their dues. In conclusion, however, they made it clear that that judgment shall not preclude the banks from realising their dues by taking recourse to other recourses, as permissible under law. This decision is of no avail as Section 24 of the TNGST Act creates only a charge and not a first charge under that Act.

²⁶ Foot Note Supra (7)

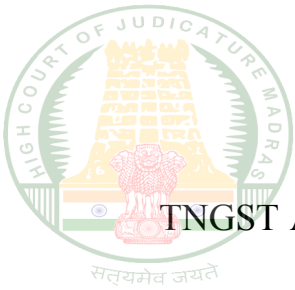


39. In *KSL and Industries Limited*²⁷, three Hon'ble Judges of the Supreme Court considered the non obstante clause in Section 32 of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) in juxtaposition with the non-obstante clause contained in Section 34 of the RDB Act. The Court noticed that both the SICA and RDB Act are special laws, applying the generally settled principles in deciding which of the non-obstante clauses would prevail.

40. The Court concluded, referring to the scope and object of the two special enactments, that Parliament intended that proceedings under the SICA for re-construction of a Sick Industrial Companies should go on in priority and that the provisions of SICA, particularly Section 22 shall prevail over Section 34 of the RDB Act. For that purpose, it stayed all other proceedings against the company and its properties during the process of re-construction. While this judgment does illuminate our overall understanding of the issues in question, it has no direct impact on the legal question that arises in this particular case.

41. In view of the detailed discussion above, it is very clear that it is the provisions of Section 26E of the SARFAESI Act and Section 34 of the RDB Act would prevail over the provisions of Section 24 of the TNGST Act. Additionally, this is a case where security interest has been created by the bank as early as in 1991, prior to the charge imposed by the Sales tax Department. Section 24 of the

²⁷ Foot Note Supra (6)



TNGST Act does not provide for priority by creation of a first charge in respect of the demands raised under that Act. Hence, Section 26E of the SARFAESI Act and Section 34 of RDB Act would prevail, in public interest.

42. Incidentally, we have had occasion to consider the interplay between, and the priority of charge between secured financial institutions and the Commercial Taxes Department in WP.No.21496 of 2008 (order dated 20.01.2025) and WP.Nos.2061 & 2062 of 2012 (order dated 21.01.2025). Our conclusions in those matters, that align with the conclusions in the present writ petitions, are extracted below:

'WP.No.21496 of 2008

25. Hence, in cases of rival claims between prior mortgages and subsequent statutory charges, by operation of Section 24 of the TNGST Act, the statutory charge is not a 'first charge' as contra distinguished by a charge created under Section 11AAAA of the Rajasthan Sales Tax Act. Hence, it is the prior mortgage that must prevail.

26. In the present case, the dates of creation of charge are 30.04.2003 in respect of the periods 1997-98 to 2001-02 and 10.05.2004 in respect of the period 1996-97. Clearly, the department has missed the bus and cannot now seek to impinge on the priority marked by the bank. In such view of the matter, the impugned B-6 notice has no legs to stand.

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30. In fine, the impugned notice is quashed and this writ petition is allowed. No costs. Connected miscellaneous petition is closed. Needless to say, if the assessee/R3 has any other assets which may be liquidated, it is always open to the Commercial Taxes Department to proceed against those assets, strictly in accordance with law.



WP.Nos.2061 & 2062 of 2012

37. From a study of the above cases, it emerges that in matters of the present nature, and in an era prior to the SARFAESI Act and Recovery of Debts due to Banks and Financial Institutions Act, 1993, the relevant factor would be to ascertain which of the contesting entities had registered the charge first or, in other words, in which case, the charge was anterior.

38. Section 26E was inserted by Act 44 of 2016, with effect from 24.01.2020. Hence, in our considered view the dates of registration of charges is what should prove paramount in such circumstances, in a decision relating to ascertainment of prior charge. Before us, the admitted position is the charges registered by the TIIC are of 1991 vintage, whereas the charges registered by the Commercial Taxes Department are of the year 2005.

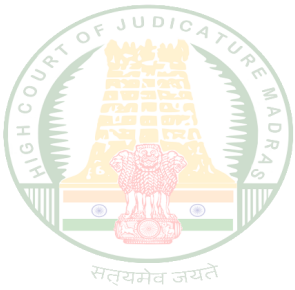
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41. Section 24(1) states that a charge is created on raising of a demand of tax that is, on the passing of an order of assessment. Though copies of the assessment orders are not before us, a copy of order dated 19.09.2001 passed by the Tamil Nadu Taxation Special Tribunal in T.P.No.221 of 2001 filed by R6 has been placed before us at pages 9 to 11 of compilation dated 17.11.2020.

42. From a perusal thereof, it is clear that the assessment orders have been passed in 1994. In any event, seeing as the periods of assessment commence from 1993-94 onwards, the demands, and consequently, the charges could have been created only thereafter. The discussion in the paragraphs supra make the position clear that the charge created by TIIC is prior in time. Hence, such charge of TIIC/R4/R5 would take precedence and we hence have no hesitation in holding that it is the TIIC that would hold priority of charge.

43. Learned Special Government Pleader has made reference to the agreements entered into by R6 with the appropriate authority qua the deferral of tax payable under



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the Sales tax Act. It is consequent upon the defaults by the assessee in adhering to the deferral scheme that orders of assessment have come to be passed raising demands under the TNGST Act. However, it is unnecessary for us to delve into this aspect of the matter to decide the question of priority of charge as between the financial institution and the Commercial taxes Department.

44. In view of the discussion as above, the prayers in the Writ Petitions are allowed, demand notice dated 12.01.2012 is quashed and mandamus as sought for is issued, forbearing R1 and R2 from in any way attaching, alienating or interfering with the ownership of the petitioner in the subject property.

45. These Writ Petitions are allowed. No costs. Connected Miscellaneous Petitions are closed.'

43. In light of the discussion as above, the impugned notices and communications are quashed and both writ petitions are allowed. No costs.

[A.S.M., J] [G.A.M., J]
16.04.2025

Index: Yes

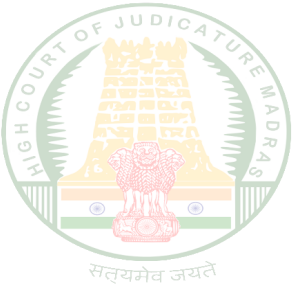
Speaking order

Neutral Citation: Yes

vs

To

The Commercial Tax Officer,
Ambattur Assessment Circle,
Chennai – 600 049.



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WP.No.31572 & 31573 of 2



Dr.ANITA SUMANTH,J.
AND
G.ARUL MURUGAN,J.

VS

W.P.Nos.31572 & 31573 of 2002

16.04.2025