

CASE DETAILS

PUNJAB & SIND BANK

v.

THE STATE OF PUNJAB & ANR.

(Civil Appeal No. 6751 of 2023)

DECEMBER 07, 2023

[ANIRUDDHA BOSE, SUDHANSHU DHULIA AND
AUGUSTINE GEORGE MASI, JJ.]

HEADNOTES

Issue for consideration: High Court whether justified in sustaining the State's claim of priority in respect of dues under the Punjab Value Added Tax Act, 2005 of the Respondent no.2 (defaulting borrower), superseding the bank's claim based on a charge created over its immovable property.

Punjab Value Added Tax Act, 2005 – s.35 – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – s.35 – Implication – Claim of primacy over the assets of the defaulting borrower – Bank relied on s.35, 2002 Act – s.35, 2005 Act however, creates first charge for State's tax dues – Priority for secured creditors – Creation of charge/priority on tax dues of a defaulting borrower to the State, if there was any inconsistency between the 2005 Act and the 2002 Act at the material point of time:

Held: The overriding provision of 2002 Act does not in any way eclipse the said provision creating first charge under the State Act – At the material point of time, there was no inconsistency between the 2005 Act and the 2002 Act, so far as the creation of charge or priority on tax dues of a defaulting borrower to the State is concerned – s.35 of the 2002 Act does not deal with the issue of creating priority for secured creditors, which is the specific mandate of s.35 of the 2005 Act – The latter provision specifically deals with superiority of the State's claim over assets of a tax defaulter – The claim of the State, which is in the nature of crown debt stands statutorily recognised as superior claim u/s.35 of the 2005 Act, and is given precedence – Thus, the common law principle of priority of crown

debt, which principle applies against unsecured creditors only would not apply in this case – Once the aforesaid provisions are examined, sans s.26E of the 2002 Act, s.35 of the 2005 Act would prevail – No error in the judgment under appeal – Affirmed – Principle of Priority of Crown Debt. [Paras 6, 9]

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – s.26E – 2002 Act amended w.e.f 24.01.2020 upon introduction of s.26E – Operation of s.26E:

Held: The operation of s.26E of the 2002 Act would be prospective – In the present case, as the State action had commenced in the year 2014, the provision of s.26E of the 2002 Act would not be applicable in this case – The said provision, having prospective effect cannot come to the aid of the bank – Punjab Value Added Tax Act, 2005. [Para 5]

LIST OF CITATIONS AND OTHER REFERENCES

Central Bank of India v. State of Kerala & Ors., [2009] 3 SCR 735 : (2009) 4 SCC 94 – relied on.

Punjab National Bank v. Union of India & Ors., 2022 INSC 230 – distinguished.

Union of India & Ors. v. SICOM Ltd. & Anr., [2008] 17 SCR 120 : (2009) 2 SCC 121 – held inapplicable.

Jalgaon Janta Sahakari Bank Ltd. & Anr. v. Joint Commissioner of Sales Tax Nodal 9, Mumbai & Anr. 2022 (5) Maharashtra Law Journal 691 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6751 of 2023.

From the Judgment and Order dated 24.04.2015 of the High Court of Punjab & Haryana at Chandigarh in CWP No.21583 of 2014.

Appearances:

Ms. Seema Gupta, Ms. Tina Garg, Advs. for the Appellant.

Shadan Farasat, AAG, Ms. Natasha Maheshwari, Karan Bharihoke, Rishabh Sharma, Advs. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

The Punjab & Sind Bank is in appeal before us against a judgment of the Punjab & Haryana High Court delivered on 24.04.2015 holding in substance sustaining the State's claim of priority in respect of dues under the Punjab Value Added Tax Act, 2005 (hereinafter called "the 2005 Act") of a corporate entity, M/S Sumit Engineering Pvt. Ltd., superseding the bank's claim based on a charge created over the immovable property of that entity (being respondent no.2 in this appeal). The said respondent, however, goes unrepresented before us when the appeal is taken up for hearing. The proceeding under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter called "the 2002 Act") was initiated on 06.09.2013 as the respondent no.2 had made default in repayment of borrowed amount, which was in principle approximately Rupees 2.60 crores apart from interest. On the other hand, the sum owed to the State on account of dues under the 2005 Act was little above Rupees 4.50 crores.

2. The State claimed first charge over the property. By a communication dated 23.05.2014, the Assistant Collector-cum Excise and Taxation Officer intimated the Bank of initiation of proceeding against the respondent no.2 under the Land Revenue Act, 1887 for recovery of the aforesaid tax dues. The bank was also apprised of attachment of the property of the defaulting respondent. The provision of Section 35 of the 2005 Act was also brought to the notice of the said respondent. It is a letter which was subject of the writ petition brought by the bank before the High Court. Section 35 of the 2005 Act, which stipulates:-

"35. Notwithstanding anything to the contrary contained in any contract or law for the time being in force, any amount of tax, penalty, interest and any other sum, payable by a taxable, registered or any other person under this Act, shall be the first charge on the property of such person from the date on which the amount becomes due and payable."

3. The bank on the other hand relied on Section 35 of the 2002 Act, in support of their claim of primacy over the assets of the defaulting borrower. This provision reads:-

“The provisions of this Act to override other laws.-The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

4. Notice under Section 13(2) of the 2002 Act was issued on 06.09.2013. The 2002 Act was subsequently amended with effect from 24.01.2020 upon introduction of Section 26E. This provision reads:-

“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.

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.”

There is a Full Bench judgment of the Bombay High Court in the case of **Jalgaon Janta Sahakari Bank Ltd. & Anr. vs. Joint Commissioner of Sales Tax Nodal 9, Mumbai & Anr.**, reported in 2022 (5) Maharashtra Law Journal 691, in which it has been held that the operation of Section 26E of the 2002 Act would be prospective.

5. As the State action had commenced in the year 2014, the provision of Section 26E of the 2002 Act would not be applicable in this case. The said provision, having prospective effect cannot come to the aid of the bank. Thus, we will have to examine the implication of Section 35 of the said two statutes, i.e. the 2002 Act and the 2005 Act.

6. In our opinion, the overriding provision of 2002 Act does not in any way eclipse the said provision creating first charge under the State Act. At the material point of time, there was no inconsistency between the 2005 Act and the 2002 Act, so far as the creation of charge or priority on tax dues of a defaulting borrower to the State is concerned. Section 35 of the 2002 Act does not deal with the issue of creating priority for secured creditors, which is the specific mandate of Section 35 of the 2005 Act. The latter provision specifically deals with superiority of the State's claim over assets of a tax defaulter. The claim of the State, which is in the nature of crown debt stands statutorily recognised as superior claim under Section 35 of the 2005 Act, and is given precedence. Thus, the common law principle of priority of crown debt, which principle applies against unsecured creditors only would not apply in this case. Once we examine the aforesaid provisions, *sans* Section 26E of the 2002 Act, Section 35 of the 2005 Act would prevail.

7. We are supported in taking this view from an earlier judgment of a coordinate Bench of this Court in the case of **Central Bank of India vs. State of Kerala & Ors.**, reported in 2009 (4) SCC 94. In the said case, this Court was examining similar provisions contained in Section 38-C of Bombay Sales Tax Act, 1959 and Section 26-B of Kerala General Sales Tax Act, 1963. In paragraph 116 of the report, the position of law on this point has been explained:-

“116. The non obstante clauses contained in Section 34(1) of the DRT Act and Section 35 of the Securitisation Act give overriding effect to the provisions of those Acts only if there is anything inconsistent contained in any other law or instrument having effect by virtue of any other law. In other words, if there is no provision in the other enactments which are inconsistent with the DRT Act or the Securitisation Act, the provisions contained in those Acts cannot override other legislations. Section 38-C of the Bombay Act and Section 26-B of the Kerala Act also contain non obstante clauses and give statutory recognition to the priority of the State's charge over other debts, which was recognised by Indian High Courts even before 1950. In other words, these sections and similar provisions contained in other State legislations not only create first charge on the property of the dealer or any other person liable to pay sales tax, etc. but also give them overriding effect over other laws”

8. On behalf of the bank, a judgment of a Coordinate Bench of this Court in which one of us (Aniruddha Bose J.) was a member, was relied upon. In that judgment, being the case of **Punjab National Bank vs. Union of India & Ors.** (2022 INSC 230) implication of a provision similar to Section 35 of the 2005 Act was not in issue. That was a case where bank's claim was competing with claim of the Union of India on the basis of confiscation of the assessee's assets under the provisions of Section 173 Q(2) of the Central Excise Rules, 1944. Factually, this case is distinguishable. Another judgment of a coordinate Bench in the case of **Union of India & Ors. vs. SICOM Ltd. & Anr.**, [(2009) 2 SCC 121] was cited on behalf of the bank, in which the principle of priority of crown debt was argued. This authority also did not deal with a specific statutory provision creating first charge for State's tax dues as has been stipulated in Section 35 of the 2005 Act. Thus, ratio of this authority is also not applicable in the facts of this case.

9. We, accordingly, find no error in the judgment under appeal and hence affirm the said judgment.

10. The appeal shall stand dismissed in the above terms.

11. Pending application(s), if any, shall stand disposed of.

12. There shall be no order as to the costs.

Headnotes prepared by:
Divya Pandey

Appeal dismissed.