(2003) 06 KL CK 0015

In the High Court Of Kerala

Case No : W.A. No. 74 of 2003

Indian Bank APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 19-06-2003

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 26B

Citation : (2005) 142 STC 281

Hon'ble Judges : Jawaharlal Gupta, C.J;A.K. Basheer, J

Bench : Division Bench

Judgement

Jawahar Lal Gupta, C.J.—The appellant approached this Court to challenge the notice, exhibit P3, by which it was informed that the State had to recover an amount of Rs. 9,62,835 along with interest on account of sales tax from M/s. Maxwell Exim Foods Limited. This amount was due on account of the levy of sales tax for the assessment year 1991-92. The bank claimed that the property was mortgaged with it and that on the security of the property, it had given loan to the said unit. Thus, it had a right to recover the money by the sale of the mortgaged property.

2. The matter was considered by the learned single Judge. In view of the provision contained in Section 26-B of the Kerala General Sales Tax Act, 1963 the learned single Judge held that the State had the prior right to recover the arrears to tax. Thus, the writ petition was dismissed. Hence, this appeal by the bank.

3. Mr. E. Subramani, learned Counsel for the appellant, contends that the bank is a secured creditor. Thus, it is entitled to recover the amount.

4. The contention cannot be sustained. Section 26-B specifically provides "that any amount of tax, penalty, interest and any other amount, if any, payable by a dealer or any other person under this Act shall be the first charge on the property of the dealer, or such person". It is, thus, clear that the State has a statutory right. This right is notwithstanding even a provision to the contrary

contained in any other law. Thus, it would override a right under any agreement, etc. In view of the statutory right vesting in the State, the view taken by the learned single Judge is correct.

5. Mr. Subramani submits that the land was mortgaged with the bank prior to the raising of demand by the State. He submits that the bank being a secured creditor, it was entitled to recover the amount due.

6. The issue has been considered by their Lordship of the Supreme Court in Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Co. and Others, , and State of Madhya Pradesh and Another Vs. State Bank of Indore and Others, . The ratio of these decisions is clear. It has been held that the public dues will have precedence over all others.

7. No other point has been raised.

8. In view of the above, we find no merit in this appeal. It is consequently dismissed.