(2023) 05 SHI CK 0064

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No.1645 Of 2018

Tek Chand Bansal & Ors — APPELLANT

Vs

State Of HP & Others — RESPONDENT

Date of Decision : 15-05-2023

Acts Referred:

Central Excise Rules, 1944 — Rule 173Q(2)
Central Excise Act, 1944 — Section 11E
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 2(zc), 2(zd), 2(ze), 2(zf), 13, 35

Citation : (2023) 05 SHI CK 0064

Hon'ble Judges : Tarlok Singh Chauhan, J;Virender Singh, J

Bench : Division Bench

Advocate : B.C. Negi, Nitin Thakur, Anup Rattan, Ramakant Sharma, Sharmila Patiyal, Arsh Rattan, Priyanka Chauhan

Final Decision : Disposed Of

Judgement

Tarlok Singh Chauhan, J

1. The moot question in this petition is as to whether the different departments of State including Excise & Revenue will have priority over the secured creditor's debt?

2. The issue in question is no longer res-integra in view of the authoritative judgment of the Hon'ble Supreme Court reported in (2022) 7 Supreme Court Cases 260, titled as, 'Punjab National Bank Vs. Union of India & Ors.' decided on 24.02.2022. It will be apt to reproduce the relevant paras of the judgment, which read as under:-

"37. Secondly, coming to the issue of priority of secured creditor's debt over that of the Excise Department, the High court in the impugned judgment has held that "In view of the matter, the question of first charge or second charge over the properties would not arise." In this context, we are of the opinion that the

High Court has misinterpreted the issue to state that the question of first charge or second charge over the properties, would not arise. Xxxxxx 38-42. ………………...

43. In view of the above, we are of the firm opinion that the arguments of the learned counsel for the Appellant, on the second issue, hold merit. Evidently, prior to insertion of Section 11E in the Central Excise Act, 1944, w.e.f. 08.04.2011, there was no provision in the Act of 1944 inter alia, providing for First Charge on the property of the Assessee or any person under the Act of 1944. Therefore, in the event like in the present case, where the land building, plant machinery, etc. have been mortgaged/hypothecated to a secured creditor, having regard to the provision contained in Section 2(zc) to (zf) of SARFAESI Act, 2002, read with provisions contained in Section 13 of the SARFAESI ACT, 2002, the Secured Creditor will have a First Charge on the Secured Assets. Moreover, Section 35 of the SARFAESI Act, 2002 inter alia, provides that the provisions of the SARFAESI Act, shall have overriding effect on all other laws. It is further pertinent to note that even the provisions contained in Section 11E of the Central Excise Act, 1944 are subject to the provisions contained in the SARFAESI Act, 2002.xxxxx 44-46.

………………….

47. To conclude, the Commissioner of Customs and Central Excise could not have invoked the powers under Rule 173 Q(2) of the Central Excise Rules, 1944 on 26.03.2007 and 29.03.2007 for confiscation of land, buildings etc., when on such date, the said Rule 173Q(2) was not in the Stature books, having been omitted by a notification dated 12.05.2000. Secondly, the dues of the secured creditor, i.e. the Appellant-bank, will have priority over the dues of the Central Excise Department, as even after insertion of Section 11E in the Central Excise Act, 1944 w.e.f. 08.04.2011, and the provisions contained in the SARFAESI Act, 2002 will have an overriding effect on the provisions of the Central Excise Act of 1944. xxxx”

3. In view of the legal position, set out hereinabove, this Court is left with no other option, but to allow this petition, by directing the respondents to register the sale certificate, dated 10.10.2017, issued by the Canara Bank, whereby the property in question has been sold to the petitioner. Ordered accordingly.

4. It is made clear that red entries, appearing in the revenue record of the property in question, due to alleged dues of Excise and Taxation department will have no bearing or effect on such transfer and this position is being maintained only to ensure that further entries of Excise and Taxation Department or the Electricity Board, as the case may be, is adequately safeguarded and protected.

5. With the above directions/observations the present petition is disposed of. Pending application(s), if any, also stand disposed of accordingly. Parties to bear their own costs.