



**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE  
HON'BLE SHRI JUSTICE VIVEK RUSIA**

**&**

**HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI**

**WRIT PETITION No. 1480 of 2024**

***M/S MAYA SPINNERS LTD. AND OTHERS***

*Versus*

***BANK OF BARODA AND OTHERS***

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**Appearance:**

*Shri Ashish Gupta - Advocate for the petitioner.*

*Shri Abhinav Dhanodkar - Advocate for the respondent No.1.*

*Shri Prasanna Prasad - Advocate for the respondent No.2.*

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**WITH**

**WRIT PETITION No. 2218 of 2006**

***COMMISSIONER***

*Versus*

***MANAGING DIRECTOR AND OTHERS***

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**Appearance:**

*Shri Prasanna Prasad - Advocate for the petitioner.*

*Shri Ashish Gupta - Advocate for the respondent No.6.*

*Shri Nikhil Pandey - Advocate for the respondent/intervener.*

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**WRIT PETITION No. 2241 of 2014**

***COMMISSIONER***

*Versus*

***DEBTS RECOVERY TRIBUNAL AND OTHERS***

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**Appearance:**

*Shri Prasanna Prasad - Advocate for the petitioner.*

*Shri Abhinav Dhanodkar - Advocate for the respondent No.1.*

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*Reserved on* : 24.09.2024  
*Pronounced on* : 04.10.2024

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**ORDER**

*Per: Justice Vivek Rusia*

**Facts of Writ Petition No.2218 of 2006**

02. Union of India through Commissioner, Customs and Central Excise, Indore has filed Writ Petition No.2218 of 2006 challenging the tender notice published on 27.10.2005 by respondent No.1, order of attachment for recovery of dues by way of attachment of properties of M/s Kowa Spinning Ltd.

2.1 M/s Kowa Spinning Ltd., Dhamnood, District Dhar was registered with Customs and Central Excise Division Ratlam. Respondent No.3 Maya Spinners Ltd., Nimrani, District Khargone was a 100% export-oriented unit registered with Customs and Central Excise Division-I, Indore. Likewise, respondent No.4 M/s Maya Spinners Ltd., Plot No.21, Sector III Industrial Area, Pithampur, District Dhar was also registered with Customs and Central Excise Division, Pithampur. Respondent No.2 was engaged in manufacturing cotton yarn, synthetic yarn and blended yarn falling under the Schedule of the Central Excise Tariff Act, 1985. Respondent No.3 was also a 100% export-oriented unit engaged in manufacturing cotton yarn, synthetic yarn and blended yarn.

2.2 According to the petitioner, respondent No.3 imported manufacturing machines without payment of central excise duties of Rs.10,14,099/- and custom duties of Rs.51,00,988/- for the manufacturing of export goods. The Central Excise Intelligence conducted a search in the factory premises of M/s Kowa Spinning Ltd. and seized the Autoconer Machine (Autoconer System 238) valued at Rs.90,00,000/- vide panchnama dated 13.06.2003. Thereafter, a show-



cause notice dated 20.03.1995 was issued for recovery of excise duty and interest to all three respondents. According to the petitioner, a sum of Rs.2,71,49,904/- is pending recovery against respondent Nos.2 to 7, the details of the same are given in Annexure P/1.

2.3 respondent Nos.2, 3 and 4 availed the various credit facilities and loans from the Madhya Pradesh State Industrial Development Corporation (hereinafter referred to as “MPSIDC”) and as a security, the respondent Nos.3, 4 and 5 mortgaged and hypothecated the land, building, machinery and other immovable property (hereinafter referred to as “Mortgaged Property” ) to the MPSIDC. The MPSIDC in order to recover the loan amount initiated the recovery proceedings and took over the possession of “Mortgaged Property” on 06.08.2005 under Section 29 of the State Finance Corporation Act, 1951 and deputed the Security Guards in all three units.

2.4 The Additional Commissioner, Customs and Central Excise, Indore vide letter dated 03.11.2005 intimated to respondent No.1 about the right on the confiscated machinery which is part of “Mortgaged Property” to recover the number of excise duties. In order to recover the dues, respondent No.1 initiated the process to sale the “Mortgaged Property” by issuing a tender notice. Hence, the petitioner Central Excise Department approached this Court challenging the action of respondent No.1 claiming the first right of Customs and Central Excise Department to recover the dues from the “Mortgaged Property”. Vide order dated 14.11.2007, this Court directed properties of respondent Nos.2 to 7 shall not be put to auction for recovery of the dues by MPSIDC and further directed to list the matter for final disposal within one year, but till today, the petition has not been heard finally and stay order is continuing.

**FACTS OF Writ Petition No. 2241 of 2014**

03. The Central Excise Department also filed another Writ Petition No.2241 of 2014 challenging the e-auction notice dated 30.01.2014 issued by the Recovery Officer, Debt Recovery Tribunal, Jabalpur to recover the debt dues of Rs.14,78,42,694/- against M/s Maya Spinners Ltd.

3.1 Apprehension of the petitioner is that respondent No.1 may auction “Mortgaged Property” at a much lower price than the actual price hence it would be difficult to recover the Government revenue. On 17.11.2015 notices were issued to the respondents, but no interim relief was granted and the writ petition was tagged with Writ Petition No.2218 of 2006 and since then this petition has been pending.

3.2 The Dena Bank (now merged into the Bank of Baroda) had entered into an agreement of hypothecation with respondent Nos.3, 4 and 5 for a grant of the loan amount of Rs.5,00,00,000/- for which “Mortgaged Property” was hypothecated. M/s Maya Spinners Ltd. deposited its title deed to create an equitable mortgage of its property situated at village Aurangapura.

3.3 A show-cause notice dated 11.12.2000 was issued followed by a demand notice dated 20.02.2001. The Bank applied for recovery of debt from M/s Maya Spinner Ltd. and others before the Debt Recovery Tribunal, Jabalpur. The Tribunal passed an award against the borrowing company on 17.08.2010 thereafter, the Bank of Baroda affixed the letter of possession on the wall of the company on 23.08.2023. M/s Maya Spinners Ltd. immediately approached the DRT by submitting an application seeking a stay of the recovery on the grounds of the stay granted by this Court in Writ Petition No.2218 of 2006. Notices were issued on the said objection and the reply was filed by the bank and vide



order dated 30.10.2023, the learned DRT has rejected such objection

**FACTS OF Writ Petition No. 1480 of 2024**

04. M/s Maya Spinners Ltd. filed a Writ Petition No.1480 of 2024 before this Court *inter alia* on the ground that during the stay granted by this Court in Writ Petition No.2218 of 2006, the bank has no right to initiate any proceeding for execution of the award. Vide order dated 24.01.2024, this High Court has stayed the auction proceeding in question and thereafter connected this Writ Petition No.1480 of 2024 along with the aforesaid two pending writ petitions. The respondent bank filed the reply as well as an application for vacating the stay. Hence, all the aforesaid three writ petitions are heard finally with the consent of the parties.

05. Shri Prasanna Prasad, learned counsel appearing for the Department of Central Excise has placed reliance on a judgment passed by the Apex Court in the case of *State Tax Officer V/s Rainbow Papers Limited, (2023) 9 Supreme Court Cases 545*, in which the Apex Court has held that the definition of secured creditor in IBC does not exclude any Government or Government Authority on the ground that the financial creditors cannot secure their dues at the cost of statutory dues owed to any Government or Governmental Authority or for that matter, any other dues.

06. Shri Abhinav Dhanodkar, learned counsel appearing for the Bank of Baroda has placed reliance on the judgment passed by the Apex Court in the case of *Punjab National Bank V/s Union of India and others, (2022) 7 Supreme Court Cases 260*, in which it is held that the dues of secured creditor i.e. bank will have priority over the other dues of Central Excise Department, as even after insertion of Section 11-E in the Central Excise Act, 1944, the provisions contained in the



SARFAESI Act, 2002 will have an overriding effect on the provisions of the Central Excise Act, 1944. Shri Dhanodkar further submits that this judgment is directly on the point of involved in the present petitions.

07. Mr Nikhil Pandey learned counsel appearing for the MPSIDC has placed reliance on a judgment passed in the case of *Industrial Development Bank of India V/s Superintendent of Central Excise and Customs and others, (2023) 10 Supreme Court Cases 107*, in which also the Apex Court has held that the Customs Act do not, in any manner, negate or override the statutory preference in terms of Section 529-A of the 1956 Act, therefore, in view of the above, all these writ petitions are liable to be dismissed.

We have heard learned counsel for the parties and perused the record.

08. So far as the Writ Petition No.2218 of 2006 is concerned, the Central Excise has filed Annexure P/1 to show that the total dues against the respondent Nos.3 to 7 are 2,71,49,904/-, there is no seal and signature of any competent authority on this document. No document has been filed to substantiate the aforesaid recoveries of excise duty against respondent Nos.3 to 7. The petitioner has not filed a copy of orders passed by the Assistant Officer in respect of recovery of the aforesaid excise duty and penalty. On the contrary, the Dena Bank (now the Bank of Baroda) approached the DRT under the provisions of the DRT Act in which the order or recovery was passed way back in the year 2010. This auction notice was issued in the year 2005 by MPSIDC, but thereafter the Dena Bank as a consortium bank in which the MPSIDC was also included, approached the DRT and got the order of recovery against the borrower companies, therefore, this notice dated 12.03.2014 has lost its effect even otherwise, because of the stay granted



by this Court, this notice was not given effect. Hence, Writ Petition No.2218 of 2006 has been rendered infructuous.

09. So far as Writ Petition Nos.2241 of 2014 and 1480 of 2024 are concerned, the issue is no more *res integra*. In the case of ***Punjab National Bank (supra)***, issue No.2 came into consideration whether in the absence of any provision providing for first charge in relation to the central excise dues in the Central Excise Act, 1944, the dues of the excise department would have priority over the dues of the secured creditor or not? The Hon'ble Apex Court has answered this issue in favour of the secured creditors that there is no provision under Section 11-E of 1944 providing for the first charge on the property of the assessee or any person. The relevant paragraphs of ***Punjab National Bank (supra)*** are reproduced below:

**50.** In view of the above, we are of the firm opinion that the arguments of the learned counsel for the appellant, on Issue 2, hold merit. Evidently, before the insertion of Section 11-E in the Central Excise Act, 1944 w.e.f. 8-4-2011, there was no provision in the 1944 Act inter alia, providing for first charge on the property of the assessee or any person under the 1944 Act. 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 provisions contained in Sections 2(1)(zc) to (zf) of the 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 11-E of the Central Excise Act, 1944 are subject to the provisions contained in the SARFAESI Act, 2002.

**51.** Thus, as has been authoritatively established by the aforementioned cases in general, and Union of India v. SICOM Ltd.<sup>7</sup> in particular, the provisions contained in the SARFAESI Act, 2002, even after insertion of Section 11-E in the Central Excise Act, 1944 w.e.f. 8-4-2011, will have an overriding effect on the provisions of the 1944 Act.

**52.** Moreover, the submission that the validity of the confiscation order cannot be called into question merely on account of the appellant being a secured creditor is misplaced and irrelevant to the issue at hand. The contention that a confiscation order cannot be



quashed merely because a security interest is created in respect of the very same property is not worthy of acceptance. However, what is required to be appreciated is that, in the present case, the confiscation order is not being quashed merely because a security interest is created in respect of the very same property. On the contrary, the confiscation orders, in the present case, deserve to be quashed because the confiscation orders themselves lack any statutory backing, as they were rooted in a provision that stood omitted on the day of the passing of the orders. Hence, it is this inherent defect in the confiscation orders that paves way for its quashing and not merely the fact that a security interest is created in respect of the very same property that the confiscation orders dealt with.

**53.** Further, the contention that in the present case, the confiscation proceedings were initiated almost 8-9 years prior to the charge being created in respect of the very same properties in favour of the bank is also inconsequential. The fact that the charge has been created after some time period has lapsed post the initiation of the confiscation proceedings, will not provide legitimacy to a confiscation order that is not rooted in any valid and existing statutory provision.

**54.** 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 26-3-2007 and 29-3-2007 for confiscation of land, buildings, etc. when on such date, the said Rule 173-Q(2) was not in the statute books, having been omitted by a Notification dated 12-5-2000. 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 11-E in the Central Excise Act, 1944 w.e.f. 8-4-2011, the provisions contained in the SARFAESI Act, 2002 will have an overriding effect on the provisions of the Central Excise Act, 1944.

**55.** Accordingly, the appeal is allowed and the confiscation Orders dated 26-3-2007 and 29-3-2007, passed by the Commissioner, Customs and Central Excise, Ghaziabad, are quashed.

10. Thereafter, in the case of *Industrial Development Bank of India (supra)* also the similar issues have been decided. Paragraph No.35, 36 & 37 of the same are reproduced below:

**35.** We have also examined Sections 61, 72 and 142 of the Customs Act 32 to consider the question of whether the Customs Act confers and creates statutory first charge on the Customs dues, and are of the opinion that the sections do not incorporate a statutory first charge to override the general law, as per the dictum in *Dena Bank*<sup>22</sup>. The provisions of the land revenue enactment applicable in the present case have not been relied upon by the respondents, in which event, a legal issue relating to conflict of laws would have arisen and required an answer. The provisions in the Customs Act





do not, in any manner, negate or override the statutory preference in terms of Section 529-A of the Companies Act, which treats the secured creditors and the workmen's dues 33 as overriding preferential creditors; and the government dues limited to debts "due and payable" in the twelve months next before the relevant date, which are to be treated as preferential payments under Section 530 of the Companies Act, but are ranked below overriding preferential payments and have to be paid after the payment has been made in terms of Sections 529 and 529-A of the Companies Act. Therefore, the prior secured creditors are entitled to enforce their charge, notwithstanding the government dues payable under the Customs Act.

**36.** The view and the ratio we have expressed is in consonance with the decision of this Court in Punjab National Bank v. Union of India<sup>34</sup>. A similar view has also been expressed by a three-Judge Bench of this Court in ABG Shipyard Liquidator v. Central Board of Indirect Taxes & Customs<sup>35</sup>, with references to the provisions of the Insolvency and Bankruptcy Code, 2016 (for short "IBC") and the Customs Act. In this context, the three-Judge Bench in ABG Shipyard Liquidator<sup>35</sup> has referred to Section 238 IBC to observe that Section 238 IBC clearly overrides any provision of law which is inconsistent with IBC. This judgment has also made reference to Section 142-A of the Customs Act, which reads thus:

**"142-A. Liability under Act to be first charge.-**

Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest or any other sum payable by an assessee or any other person under this Act, shall, save as otherwise provided in Section 529-A of the Companies Act, 1956 (1 of 1956), the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (51 of 1993), the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 and the Insolvency and Bankruptcy Code, 2016 be the first charge on the property of the assessee or the person, as the case may be."

**37.** Section 142-A of the Customs Act was inserted by Act 8 of 2011 with effect from 8-4-2011. It does not apply to the present litigation. Section 142-A of the Customs Act protects and ensures that the dues under the Customs Act do not, in any way, affect the rights of third parties under Section 529-A of the Companies Act or rights of the parties as per provisions of the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (for short "the RDDBFI Act"), the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act") and IBC. Read in this manner, it is clear to us that the provision of Section 142-A of the Customs Act, insofar as it protects the rights of overriding preferential creditors governed and covered by Section 529-A of the Companies Act, is



clarificatory and declaratory, and does not lay down a new dictum or confer any new right as far as the present case is concerned. However, the enactment of Section 142-A of the Customs Act does confer or create a first charge on the dues "payable" under the Customs Act, notwithstanding 9 provisions under any Central Act, but not in cases covered under Section 529-A of the Companies Act, RDDBFI Act, SARFAESI Act and IBC. Section 142-A of the Customs Act, post its enactment, would dilute the impact of Section 530 of the Companies Act, which had restricted preferential treatment to government taxes "due and payable" limited to twelve months before the "relevant date", without preferential right for taxes that had become "due and payable" in the earlier period.

11. So far as the judgment of the *State Tax Officer (supra)* is concerned, that relates to the recovery of Sales Tax and VAT. The question raised by the appellant therein is whether Section 53 of the Insolvency and Bankruptcy Code, 2016 (in short "IBC") overrides Section 48 of the Gujarat Vat Act. After considering Section 48 of GVAT, the Apex Court has held that the State is also a secured creditor as defined under Section 3(30) of IBC. Therefore, this judgment will not help the Union of India.

12. In view of the above, the Debt Recovery Tribunal has not committed any error while dismissing the objections raised by M/s Maya Spinners Ltd. Accordingly, the Writ Petition No.2241 of 2014 is hereby **dismissed** as the DRT has rightly initiated the proceedings for recovery of the debt in execution of the award passed in favour of the bank. As a consequence, Writ Petition Nos.1480 of 2024 and 2218 of 2006 are also **dismissed**.

13. Let a photocopy of this order be kept in Writ Petition Nos.2218 of 2006 and 2241 of 2014.

**(VIVEK RUSIA)**  
**JUDGE**

**(BINOD KUMAR DWIVEDI)**  
**JUDGE**