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JUDICIAL INSIGHT

Case Name

Industrial
Development Bank of
India v.
Superintendent of
Central Excise and
Customs and Others
[Civil Appeal No. 2568
of 2013 dated August
18, 2023]

CUSTOMS ACT DOES NOT ESTABLISH A STATUTORY PRIMARY CLAIM THAT SUPERSEDES THE RIGHTS OF A SECURED CREDITOR : SUPREME COURT

Facts:

During the years 1994-2000, the Industrial Development Bank of India ("the Appellant") offered financial assistance to M/s. Sri Vishnupriya Industries Limited ("the Company"). The Company had hypothecated moveable property as security. The hypothecated moveable property, namely machinery and its components, was warehoused in a private bonded warehouse by executing bond in accordance with Section 59(1) of the Customs Act, 1962 ("the Customs Act").

Even after the extended time of storage expired, the Company had not cleared the products for domestic use in accordance with Section 47 of the Customs Act. Following that, the Revenue Department issued a Show Cause Notice on February 17, 2000, and after considering the company's response, the Revenue Department confirmed the levy of customs duty in orders dated September 15, 2000 and October 10, 2000, and when the company did not pay the customs duty, the Revenue Department auctioned the warehoused goods for recovery of the customs duty in an order dated December 19, 2000, relying on the powers conferred under Section 72(2) read with Section 142 of the Customs Act. Meanwhile, the Company moved for dissolution with the Hon'ble Andhra Pradesh High Court. On April 1, 2003, the petition was granted. The order of December 1, 2003, directed that the company be wound up.

Following that, the Official Liquidator made an application under Section 468 of the Companies Act requesting the customs authorities to give over custody of the imported goods that had been placed up for auction in order to pay the customs duty. Furthermore, the said application was granted by a single judge of the Andhra Pradesh High Court, who held that the official liquidator is a custodian of all the Company's properties and that any person making a claim against the Company must prove his claim before the Official Liquidator by providing necessary supporting documentation.

Aggrieved by the view of the single bench judge the custom authorities preferred an intra court appeal. The division bench relied



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on the ratio of the Calcutta High Court in **Collector of Customs v. Dytron 1998 SCC Online Cal 674** held that Section 468 of the Companies Act has no application as it empowers the Company Court to require the 'contributory' to pay, deliver, surrender or transfer any money, property or books and papers in his custody or control and the word 'contributory', defined in Section 428 of the Companies Act, does not include the customs department/authorities.

Aggrieved, the Appellant filed the appeal before the Supreme court.

Issue:

Is it true that the Customs Act generates a first charge that supersedes the secured creditor's charge?

Held:

The Hon'ble Supreme Court in Civil Appeal No. 2568 of 2013 held as under:

- While considering the question of the precedence of government dues or Crown debts over the dues of other creditors, it was determined that the crown has a preferential right to recover the debts over other creditors.
- Opined that, the provisions in the Customs Act do not, in any manner, negate or override the statutory preference in terms of Section 529A of the Companies Act which treats the secured creditors.
- Therefore, the prior secured creditors are entitled to enforce their charge, notwithstanding the government dues payable under the Customs Act.
- Opined that, the decision relied by the division bench of Andhra Pradesh High Court on Dytron (India) Ltd. (1998 SCC Online Cal 674) does not lay down the correct law and is, accordingly, overruled.
- Held that, the position in law was that the debt 'due and payable', when it falls within the four corners of clause (a) to Section 530(1) of the Companies Act, would be treated as preferential payment, but it would not override and be given preference over the payments of overriding preferential creditors covered under Section 529A of the Companies Act.
- The Supreme Court granted the appeal, overturning the division bench decision of the Hon'ble Andhra Pradesh High Court and ordering the payment of the amounts to the Official Liquidator for distribution in accordance with Sections 529A and 530 of the Companies Act.

Head Quarters:

Vasudha, 2nd Floor, No. 2, 38th Main Rd,
Rose Garden, JP Nagar Phase 6, J. P. Nagar,
Bengaluru, Karnataka 560078

Ph: 080 41673023

Email: info@ricago.com

Website: www.ricago.com

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