

*Before Amol Rattan Singh, J.*

**PUNJAB NATIONAL BANK CIRCLE OFFICE LUDHIANA  
AND ANOTHER—*Petitioners***

*versus*

**UNION OF INDIA AND OTHERS—*Respondents***

**CWP No. 25999 of 2019**

November 24, 2020

***Employees Provident Funds and Miscellaneous Provisions Act, 1952—S.11—Dues of workers—Demand of revenue by the central excise was prior to the demand raised by PF Commissioner from the defaulting company—If the dues had been paid, no fund would have been left with the bank to pay PF—Held, charge under PF Act 1952 would have precedence over the demand raised by central excise—The attachment of salary of the bank manager by the EPF department, as he had credited the amount from the account of the defaulting company to central excise instead of EPF also set aside—Held, bank not being a legal expert with no mala fides attributable to Manager.***

*Held that*, of course the stand of the Central Excise is also to the effect that their demand had been raised two to three years prior to the demand raised by the Provident Fund Commissioner and therefore the Revenue would have a prior right over and above the subsequent demand raised, (because in any case had the dues been paid at that stage itself by the petitioner-Bank, there would actually be no funds left with the bank, in the accounts of M/s R.V. International, for payment to the Provident Fund Commissioner in the year 2019). Yet, the Revenue not having pursued on the payment for a period of three years and thereafter the Provident Fund Commissioner having raised a demand for payment of dues to workers of M/s R.V. International Ltd., from the funds of that company deposited in the bank, in my opinion, the first charge under the Act of 1952 would take precedence even over a demand raised by the Central Excise, even prior in time, if such demand was not satisfied by the time that the demand by the Provident Fund Commissioner was raised.

(Para 21)

*Further held that*, to repeat, though legally, even in the opinion of this court, it would be respondents no. 3 and 4 to whom the payment

should have been made by the petitioner, yet, obviously the bank not being a legal expert, with no *mala fides* whatsoever attributable to petitioner no. 2 in transferring the amount claimed by the Union of India to the Department of Central Excise, rather than to the Provident Fund Commissioner, the impugned order deserves to be set aside.

(Para 23)

*Further held that*, that being so, it is held that though first charge on any amount due from the M/s R.V. International could be claimed by the Provident Fund Commissioner under the Act of 1952, yet, the deposit having been made by the petitioner in favour of respondents no. 1 and 5 on account of the Chief Manager being under a 'legal threat'; the direction issued in the impugned order, to attach the salary of petitioner no. 2, is hereby quashed.

(Para 24)

Saurav Verma, Advocate  
*for the petitioner no. 1.*

Aakash Soni, Advocate  
for petitioner no. 2 (formerly proforma respondent no. 6).

Saurav Goel, Advocate  
for respondent nos.1 and 5.

Rajesh Hooda, Advocate  
for respondents no.3 and 4.

### **AMOL RATTAN SINGH, J.**

(1) By this petition, the petitioner (the Punjab National Bank, Circle Office Ludhiana and the Chief Manager of the Branch at Dhandari Kalan, Ludhiana), challenge the order passed by the 3<sup>rd</sup> respondent, i.e. the recovery officer of the Employees Provident Fund Organization, Ludhiana, dated 24.05.2019 (copy Annexure P-10), by which in fact the Zonal Manager of the said Bank (petitioner no. 2) has been made liable to pay a sum of Rs. 4,91,263/-on account of dues from M/s R.V. International, Dhandari Kalan, Ludhiana, which firm is stated to be a 'deemed defaulter' under the provisions of Section 11 (2) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

(2) The salary of the Chief Manager of the Dhandari Kalan Branch of the Bank, has also been ordered to be attached, towards recovery therefrom of the dues.

(3) It is to be noticed that the aforesaid 'deemed defaulter',

has not been impleaded as a respondent in the present petition, with learned counsel for the 1<sup>st</sup> petitioner having submitted that since the impugned order is only one by which the petitioner Bank and its officer have been held liable to pay the aforesaid sum of money, in default of payment of which the Chief Manager of the Dhandari Kalan Branch would be liable for recovery in his personal capacity, the aforementioned firm was not considered to be a necessary party in the present petition at least.

(4) It is also needs specific mention that the petition had been filed with only the Punjab National Bank, Circle Office, Ludhiana, shown to be the petitioner (through its Inspection and Audit Manager) but thereafter, vide an order dated 24.08.2020, the person originally impleaded as respondent no. 6, i.e. Sh. Pankaj Mohan, Chief Manager of the Dhandari Kalan Branch of the Bank, had been ordered to be transposed as petitioner no. 2, in view of the fact that the petitioner Bank was in fact defending the action being taken by respondents no. 3 and 4 against respondent no. 6, with there being no conflict of interest whatsoever between the Bank and its Chief Manager.

(5) Consequently, all references made in the pleadings to respondent no. 6, have been taken in the judgment as references to petitioner no. 2, this court having ordered that the (former) respondent no. 6 be transposed as petitioner no. 2.

(6) The facts, as given in the petition, are to the effect that initially, on 22.03.2016, the said Chief Manager received a notice/communication, (copy Annexure P-1), from respondent no. 5, i.e. the Assistant Commissioner, Central Excise, Ludhiana, to the effect that a '*Garnishee* notice' under the provisions of sub-section (2) of Section 11 of the Central Excise Act, 1944 (hereinafter referred to as the Act of 1944) had been served upon M/s R.V. International on 18.03.2016 and consequently the bank was requested not to make any payment/transaction pertaining to the account of the said firm.

(7) A copy of the notice issued to the aforesaid firm has also been annexed as Annexure P-2 with the petition, a perusal of which shows that as a matter of fact Rs. 2,19,94,844/- lacs were "pending realization" from M/s Mahajan Steel Rolling Mill Private Limited, in terms of an order passed by the Supreme Court on 22.11.2013 in Civil Appeal (D) No. 14420 of 2013; and therefore M/s R.V. International were requested by the Department of Central Excise to not make any payment to M/s Mahajan Steel Rolling Mill Private Limited, or to any allied account, and that Rs. 78,63,429/- be deposited by M/s R.V.

International within seven days of the receipt of the letter/notice, in terms of clause (iii) of Section 11 of the Act of 1944, read with Section 142 (1) (c) (ii) of the Customs Act, 1962 (made applicable to like matters in Central Excise, w.e.f. 04.05.1963).

(8) [As per the said notice to M/s R.V. International, the aforesaid provisions were to be further read with the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995].

(9) The notice ends by stating that in case of default of payment of the aforesaid amount, action would be initiated against M/s R.V. International.

(10) The writ petition further goes on to state that in compliance of the aforesaid letter/order dated 22.03.2016, the petitioner bank immediately froze the account of M/s R.V. International, on that date itself.

(11) The petition then 'jumps to' March 20, 2019, i.e. three years later, when an order (Annexure P-3) under Section 8 F of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, (hereinafter referred to as the Act of 1952), was served upon petitioner no. 2, i.e. the Chief Manager of the Bank, stating therein that M/s R.V. International had failed to remit statutory dues under the provisions of the said Act, amounting to Rs. 5,91,263/-, and therefore from the account of Sh. Sanjeev Sood of the said company, the said amount be paid by the Bank.

(12) [The notice does not state as to in what capacity Sanjeev Sood was working in M/s R.V. International].

(13) However, since the said bank account already stood frozen in pursuance to the notice issued by respondent no. 5 on 22.03.2016, the petitioner bank has stated that it was unable to take any action on the notice dated 20.03.2019 issued by respondent no. 4.

(14) Thereafter, another notice of the same date was sent by respondent no. 3 under Section 8 F (3) (x) of the Act of 1952 (copy Annexure P-4), informing the bank to immediately comply with the earlier notice/order of the same date.

(15) Consequently, on 22.03.2019, a direction was issued by petitioner no. 1 to petitioner no. 2 to remit the aforesaid amount of Rs. 5,91,263/- by way of a demand draft favouring the Regional Provident Fund Commissioner, Ludhiana.

(16) On 24.04.2019, petitioner no. 2 wrote a letter to the Deputy Commissioner (Preventive), CGST Commissionerate, Ludhiana (copy Annexure P-6), stating therein that respondent no. 3 had demanded a sum of Rs. 4,91,263/-, also attaching with a letter dated 22.04.2019, a judgment of the Supreme Court dated 01.04.2019, stating that the said amount would be 'first charge' and therefore the bank be informed immediately as to whom the payment should be made to, from the account of M/s R.V. International; and in case instructions in that regard were not received, then the bank would make the payment to respondent no. 3, with no responsibility falling on its shoulders.

(17) [It seems that the amount of Rs. 4,91,263/- has been erroneously mentioned instead of Rs. 5,91,263/-.

(18) It also needs to be noticed that when this court asked learned counsel for respondents no. 3 & 4 (the Provident Fund Commissioner), to produce the order of the Supreme Court dated 01.04.2019, he, upon taking instructions from the said respondent, submitted that as a matter of fact that date was erroneously given and instead, the order of the Supreme Court as was annexed with the letter addressed to the Bank dated 22.04.2019, was a judgment passed on 08.10.2009 in Civil Appeal No. 6893 of 2009, titled as ***Maharashtra State Co-operative Bank Limited*** versus ***the Assistant Provident Fund Commissioner and another***.

(19) The very next day, i.e. on 25.04.2019, respondent no. 5 "strictly cautioned" the bank that since 'Garnishee notices' had been served upon M/s R.V. International on 22.03.2016, 15.01.2017 and 24.04.2017, therefore the funds available with the Bank in the account of the said firm would be the 1<sup>st</sup> charge (with the Customs and Excise Department), and consequently the bank was to immediately remit the amount demanded (from that account) to the Government Treasury.

(20) A perusal of the said letter (copy Annexure P-7), also shows that it has been stated therein that EPFO had issued an order for recovery only on 20.03.2019 and therefore the Customs and Excise Department would have first charge to claim any amount available in the said account, as the notices issued by that department were much prior in time to 2019.

(21) Consequently, petitioner no. 2 informed respondent no. 3 that he had been "strictly asked" not make any payment to the Employees Provident Fund Department and had in fact been asked to remit the account due from the account of M/s R.V. International to

the Government Treasury and therefore the bank was not in a position to remit the amount demanded by the Provident Fund Department.

(22) The said letter was followed up by another letter dated 03.05.2019.

(23) Thereafter, on 22.05.2019, the bank deposited the entire amount available in the account of M/s R.V. International, i.e. Rs. 3,24,381/-, in the Central Government Treasury, pursuant to the directions issued by the Department of Central Excise, i.e. respondent no. 5.

(24) The petition goes on to state that despite the petitioner bank having acted wholly *bona fide* and having informed respondent no. 3 that it was incumbent upon it to release the payment in favour of the Central Government Treasury, in view of the letter dated 25.04.2019, respondent no. 3 still issued the impugned order dated 24.05.2019, by which the salary of petitioner no. 2 (formerly respondent no. 6), i.e. the Chief Manager, was ordered attached, which order was complied with by petitioner no. 1, but a legal opinion was obtained to the effect that petitioner no. 2/respondent no. 6 had committed no illegality in releasing the payment in favour of the Department of Central Excise.

(25) It is next stated in the petition that respondent no. 5 was therefore requested not to encash the bank draft in order to safeguard the interest of the Chief Manager; with letters to that effect having been sent on 30.07.2019 and 14.08.2019 (copies Annexures P-12 and P-13).

(26) The contention of the petitioner bank therefore is that attachment of the salary of petitioner no. 2 is wholly illegal, the Chief Manager of the bank having acted in a wholly *bona fide* manner.

(27) That, thus, is the entire controversy in the petition, i.e. as to whether the direction to attach the salary of the Chief Manager of the Bank, vide the impugned letter/order dated 24.05.2019, is sustainable or not.

(28) Initially a short reply was filed on behalf of respondents no. 3 and 4, by way of an affidavit of the Regional Provident Fund Commissioner-II, Ludhiana.

(29) It has been stated therein that the petition is not maintainable at the hands of the petitioner bank as no action has been ordered to be taken against the bank but only against its Chief Manager (formerly respondent no. 6), as he did not comply with the order passed under

Section 8 F of the Act of 1952, read with Section 11 (2) thereof; and therefore made himself liable to pay the dues, in terms of the said provisions.

(30) Hence, he not being aggrieved of that action being taken against him, and not having approached the court, the petition itself was not maintainable.

(31) Other than that, the facts already given with regard to issuance of notices by respondent no. 3 have been stated in the reply, with one of the letters issued by respondent no. 3 (dated 07.05.2019) also referred to, informing petitioner no. 2 that in terms of Section 11 (2) of the Act of 1952, provident fund dues are to be given priority over other debts, even in terms of the judgment of the Supreme Court as *Maharashtra State Co-operative Bank Limited* versus *APFC and another*<sup>1</sup>.

(32) The affidavit of respondent no. 3 further states that as no action was taken by petitioner no. 2 despite various reminders, the salary attachment order was issued, for wilful disobedience of the orders passed under Section 8 F and sub-section (2) of Section 11 of the Act of 1952 (which provisions have been reproduced in the reply for respondent no. 3 and are further reproduced hereinunder for convenience).

**“8F. Other modes of recovery.**

(1) Notwithstanding the issue of a certificate to the Recovery Officer under section 8B, the Central Provident Fund Commissioner or any other officer authorised by the Central Board may recover the amount by any one or more of the modes provided in this section.

(2) If any amount is due from any person to any employer who is in arrears, the Central Provident Fund Commissioner or any other officer authorised by the Central Board in this behalf may require such person to deduct from the said amount the arrears due from such employer under this Act and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Central Provident Fund Commissioner or the officer so authorised, as the case may be:

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<sup>1</sup> AIR 2010 SC 868

Provided that nothing in this sub-section shall apply to any part of the amount exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908(5 of 1908).

(3) (i) The Central Provident Fund Commissioner or any other officer authorised by the Central Board in this behalf may, at any time or from time to time, by notice in writing, require any person from whom money is due or may become due to the employer or, as the case may be, the establishment or any person who holds or may subsequently hold money for or on account of the employer or as the case may be, the establishment, to pay to the Central Provident Fund Commissioner either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due from the employer in respect of arrears or the whole of the money when it is equal to or less than that amount.

(ii) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or an account of the employer jointly with any other person and for the purposes of this sub-section, the shares of the joint-holders in such account shall be presumed, until the contrary is proved, to be equal.

(iii) A copy of the notice shall be forwarded to the employer at his last address known to the Central Provident Fund Commissioner or, as the case may be, the officer so authorised and in the case of a joint account to all the joint-holders at their last addresses known to the Central Provident Fund Commissioner or the officer so authorised.

(iv) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, bank or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made notwithstanding any rule, practice or requirement to the contrary.



(v) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(vi) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the employer or that he does not hold any money for or on account of the employer, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Central Provident Fund Commissioner or the officer so authorised to the extent of his own liability to the employer on the date of the notice, or to the extent of the employers liability for any sum due under this Act, whichever is less.

(vii) The Central Provident Fund Commissioner or the officer so authorised may, at any time or from time to time, amend or revoke any notice issued under this sub-section or extend the time for making any payment in pursuance of such notice.

(viii) The Central Provident Fund Commissioner or the officer so authorised shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section, and the person so paying shall be fully discharged from his liability to the employer to the extent of the amount so paid.

(ix) Any person discharging any liability to the employer after the receipt of a notice under this sub-section shall be personally liable to the Central Provident Fund Commissioner or the officer so authorised to the extent of his own liability to the employer so discharged or to the extent of the employer's liability for any sum due under this Act, whichever is less.

(x) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Central Provident Fund Commissioner or the officer so authorised he shall be deemed to be an employer in default

in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrears due from him, in the manner provided in sections 8B to 8E and the notice shall have the same effect as an attachment of a debt by the Recovery Officer in exercise of his powers under section 8B.

(4) The Central Provident Fund Commissioner or the officer authorised by the Central Board in this behalf may apply to the court in whose custody there is money belonging to the employer for payment to him of the entire amount of such money, or if it is more than the amount due, an amount sufficient to discharge the amount due.

(5) The Central Provident Fund Commissioner or any officer not below the rank of Assistant Provident Fund Commissioner may, if so authorised by the Central Government by general or special order, recover any arrears of amount due from an employer or, as the case may be, from the establishment by distraint and sale of his or its movable property in the manner laid down in the Third Schedule to the Income Tax Act, 1961.”

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### **11. Priority of payment of contributions over other debts--**

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“(2) Without prejudice to the provisions of sub-section (1), if any amount is due from an employer [whether in respect of the employees contribution (deducted from the wages of the employee) or the employer's contribution], the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts.”

(33) Hence, it is stated that even as per Section 11 (2) of the Act of 1952, any amount due under that Act would be seen to be the first charge on the assets of the establishment concerned and would be payable as a priority, over all other debts.

(34) Various paragraphs of the judgment of the Supreme Court in

**Maharashtra State Co-operative Bank** (*supra*), have also been reproduced in the reply of respondent no. 3, with the following extract therefrom reproduced hereinunder:-

“.....As mentioned earlier, sub-section (2) was inserted in Section 11 by Amendment Act No. 40 of 1973 with a view to ensure that payment of provident fund dues of the workers are not defeated by the prior claims of the secured and/or of the unsecured creditors.”

(35) Similarly, two judgments of the Apex Court in **Employees Provident Fund Commissioner versus O.L. of Esskay Pharmaceuticals Limited<sup>2</sup> and Union of India and others vs. SICOM Ltd. and another<sup>3</sup>**, have also been referred to and reproduced, to contend that dues payable under the Act of 1952 would be first charge, with priority over all other dues.

(36) Learned counsel for the Provident Fund Commissioner also referred to a judgment of a Division Bench of the Gujarat High Court in **Indian Overseas Bank versus Employees Provident Fund Organization** (Sessions Civil Application no. 4879 of 2017), decided on 10.04.2017.

(37) In that case, the issue was whether the Bank would have first charge over the assets of a company to which it had issued a loan, or whether it would be the Provident Fund Commissioner who would have first charge over such assets, to pay off the dues of the company to its employees, under the Act of 1952.

(38) After considering the law on the subject, including the judgments in **Maharashtra State Co-operative Bank** (*supra*), and another judgment also involving the same bank (**Maharashtra State Co-operative Bank versus Kannad Sahakari Sakhar Karkhana Limited and others<sup>4</sup>**), it was held that the first charge created under the Act of 1952 would prevail over the SARFAESI Act, 2002.

(39) It is also necessary to notice here that other than the aforesaid short reply, subsequently, even a detailed written statement was filed on behalf of respondents no. 3 and 4, essentially stating to the same effect but by referring to various Constitutional provisions also.

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<sup>2</sup> (2011) 10 SCC 727

<sup>3</sup> (2009) 2 SCC 121

<sup>4</sup> (2014) 14 SCC 456)

(40) As regards the 'cryptic' written statement filed by respondents no. 1 and 5 (the Customs and Excise Department), the factual position is obviously not denied, with the stand taken by learned counsel appearing for the said respondents being that as per Section 11 E of the Central Excise Act, 1944, any liability under that Act would be the first charge over and above all other dues.

The said provision reads as follows:-

“**S.11E.** 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 or the rules made thereunder shall, save as otherwise provided in section 529A of the Companies Act, 1956, (1 of 1956) the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (51 of 1993) and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002, (54 of 2002) be the first charge on the property of the assessee or the person, as the case may be.”

(41) A judgment of the Supreme Court in *M/s Madrash Petrochem Limited and another* versus *BIFR and others*<sup>5</sup>, was also cited by learned counsel, wherein the following question was framed by their Lordships:-

“Whether the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 prevails over the Sick Industrial Companies (Special Provisions) Act, 1985”

(42) While answering that question, the Supreme Court, while referring to a previous judgment in *Solidaire India Limited* versus *Fairgrowth Financial Services Limited and others*<sup>6</sup>, quoted from that judgment as follows:-

“...Had the legislature wanted to exclude the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, from the ambit of the said Act, the legislature would specifically have so provided.”

Similarly, other judgments on the issue of the effect of a

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<sup>5</sup> AIR 2016 SC 898

<sup>6</sup> (2001) 3 SCC 71

non-obstante clause (in other Acts) taking precedence over the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, were also referred to by learned counsel for respondents no. 1 and 5.

(43) However, no specific judgment qua the Acts of 1944 and 1952 as to which would take precedence over the other, as a first charge on any assets, was cited by learned counsel for respondents no. 1 and 5.

(44) Having considered the matter, what is first to be noticed is that the dues as are stated to be claimed by respondent no. 5 under the Act of 1944, arise out of an order in “Original no. 61/Ldh/05, dated 13.01.2006”, though the demand was raised subsequently.

(45) Though the financial year in respect of which the dues and demand was raised qua M/s Mahajan Steel Rolling Mill Private Limited, is not seen to be forthcoming in any of the pleadings; yet, upon learned counsel for the Provident Fund Commissioner having stated that the demand was in respect of the year 2008, that fact was not denied by learned counsel for respondents no. 1 and 5 (which obviously would be after he had taken instructions to that effect).

(46) However, the provision that is being relied upon by respondents no. 1 and 5 to claim first charge upon apex of the company and therefore on the assets of M/s R.V. International (which was to make payments to M/s Mahajan Steel Rolling Mill Private Limited), is in terms of Section 11 E of the Act of 1944, which admittedly was inserted in that Act vide Finance Act 08 of 2011, w.e.f. 01.04.2011.

(47) Thus, all other parameters apart, with there having been shown to be no retrospectivity of the application of Section 11 E, it would be a moot point as to whether the said provision could take precedence over Section 11 (2) of the Act of 1952, with that provision, stipulating that all dues under the said Act would be the first charge, being existent since 1973.

(48) That apart, provident fund payable under the Act of 1952 being payments to workmen and other employees of any establishment (a firm in the present case, i.e. M/s R.V. International), the judgment of the Supreme Court cited by learned counsel for respondents no. 3 and 4, i.e. the Provident Fund Commissioner, would be wholly applicable in my opinion, in view of what has already been reproduced from the judgment in **Maharashtra State Co-operative Bank** (supra) (reference para no. 47).

(49) Though, undoubtedly, in those cases the issue was not between the Revenue and the Provident Fund Commissioner but with regard to the first charge under the Act of 1952 taking precedence over the SARFAESI Act etc., however, the ratio that this court would cull out from those judgments, is that provident fund payable under the Act of 1952, being for the benefit of workmen in any establishment, who naturally would not normally be in a good financial position, even the demand of the Revenue (Central Excise in this case), would be relegated to a 2<sup>nd</sup> priority qua a demand raised under the Act of 1952.

(50) Of course the stand of the Central Excise is also to the effect that their demand had been raised two to three years prior to the demand raised by the Provident Fund Commissioner and therefore the Revenue would have a prior right over and above the subsequent demand raised, (because in any case had the dues been paid at that stage itself by the petitioner-Bank, there would actually be no funds left with the bank, in the accounts of M/s R.V. International, for payment to the Provident Fund Commissioner in the year 2019). Yet, the Revenue not having pursued on the payment for a period of three years and thereafter the Provident Fund Commissioner having raised a demand for payment of dues to workers of M/s R.V. International Ltd., from the funds of that company deposited in the bank, in my opinion, the first charge under the Act of 1952 would take precedence even over a demand raised by the Central Excise, even prior in time, if such demand was not satisfied by the time that the demand by the Provident Fund Commissioner was raised.

(51) Having held so, the question then would be as to whether the salary of petitioner no. 2 has been correctly ordered to be attached, vide the impugned order, or the said order is wholly unsustainable in that respect.

(52) Though otherwise there would be no reason to hold the order to be statutorily not sustainable, yet, what this court obviously cannot overlook is the fact that petitioner no. 2 and the bank itself, i.e. petitioner no. 1, had not acted in any *mala fide* manner whatsoever, in depositing the entire assets as were available in the account of M/s R.V. International, with the Government Treasury favouring respondents no. 1 and 5.

(53) Obviously, with them also having obtained a legal opinion from their lawyer, to the effect that petitioner no. 2 had not acted illegally, and with the notice issued by respondent no. 5 being much prior in time to the one issued by respondents no. 3 and 4 and with

petitioner no. 2 being under threat of action from respondents no. 1 and 5 in case of non-deposit of the amount, petitioner no. 2 was actually caught between the proverbial 'devil and the deep blue sea'.

(54) To repeat, though legally, even in the opinion of this court, it would be respondents no. 3 and 4 to whom the payment should have been made by the petitioner, yet, obviously the bank not being a legal expert, with no *mala fides* whatsoever attributable to petitioner no. 2 in transferring the amount claimed by the Union of India to the Department of Central Excise, rather than to the Provident Fund Commissioner, the impugned order deserves to be set aside.

(55) That being so, it is held that though first charge on any amount due from the M/s R.V. International could be claimed by the Provident Fund Commissioner under the Act of 1952, yet, the deposit having been made by the petitioner in favour of respondents no. 1 and 5 on account of the Chief Manager being under a 'legal threat'; the direction issued in the impugned order, to attach the salary of petitioner no. 2, is hereby quashed.

(56) Consequently, if any salary as was attached, has been still not been released to petitioner no. 2 by petitioner no. 1 pursuant to the impugned order, it be released to him immediately, within a period of one month from the date of receipt of a certified copy of this order.

(57) As regards the amount already deposited by the petitioners with the Central Government Treasury for onward transfer to respondents no. 1 and 5, the said amount be paid immediately, within 2 months, by respondents no. 1 and 5 to respondents no. 3 and 4, in terms of the demand raised by the latter upon the petitioner-Bank, qua the assets of M/s R.V. International, Ludhiana.

(58) It needs to be observed here that though this is a petition filed by the Bank seeking the quashing of the impugned order by which the salary of its officer has been ordered to be attached, in terms of the provisions of the Act of 1952, and it is not a petition seeking that the Department of Central Excise be directed to pay the amount to the Provident Fund Commissioner, however, since the legal issue is as to who would have a first charge on the assets of a particular firm/company and it has been held hereinabove that it would be the Provident Fund Commissioner, in terms of the Act of 1952, as would have such charge, but the asset (money) in the bank account of the firm has been transferred by the Bank/its officer to the Central Excise instead of the Provident Fund Commissioner, the direction to correct

that erroneous payment has been given in this order.

(59) The petition is allowed as aforesaid with however no order as to costs.

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*Payel Mehta*