IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

WP(C).No. 9987 of 2008 (L)

PETITIONER :

AUSHIM SOFT PVT.LTD. A COMPANY
INCORPORATED UNDER THE COMPANIES ACT, 1956, AND
HAVING ITS REGISTERED OFFICE AT LEELA BAUG, ANDHERI
KURLA ROAD, ANDHERI(EAST), MUMBAI 400 059
REP.BY, AUTHORIZED SIGNATORY, SHRI.V.J.JAYAKUMAR.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS :
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1. STATE OF KERALA REPRESENTED BY THE
SECRETARY TO GOVERNMENT, TAXES (E) DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE LAND REVENUE COMMISSIONER,
PUBLIC OFFICE BUILDING, THIRUVANANTHAPURAM.

3. THE INSPECTOR GENERAL OF REGISTRATION,
THIRUVANANTHAPURAM.

4. THE SUB REGISTRAR, SUB REGISTRAR'S OFFICE
KAZHAKKOOTTAM.

ADDL. R5 IMPLEADED :

5. CHIEF EXECUTIVE OFFICER, ELECTRONIC TECHNOLOGY PARK
KERALA PARK CENTRE, TECHNO PARK CAMPUS,
KARIAVATTOM, THIRUVANANTHAPURAM - 695581.

ADDL. R5 IS IMPLEADED AS PER ORDER DT 01/04/2008 IN IA 4505/2008.

R1 TO R4 BY GOVERNMENT PLEADER SRI. SOJAN JAMES
ADDL.R5 BY ADV. SRI.P.A.AHAMED, SC, TECHNOPARK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12/11/2015, THE COURT ON 18-11-2015 DELIVERED THE
FOLLOWING:

bp

WP(C).No. 9987 of 2008 (L)

APPENDIX

PETITIONER'S EXHIBITS :

P1: COPY OF THE GOVERNMENT ORDER, VIE NO. G.O.(P) NO. 93/99/TD DT 28/6/1999 PUBLISHED IN KERALA GAZETTE VIDE S.R.O. 550/99.

P2: COPY OF THE GOVERNMENT ORDER, VIDE NO. G.O.(P) NO. 94/99/TD DT 28/6/1999 PUBLISHED IN KERALA GAZETTE VIDE S.R.O. 551/99.

P3: COPY OF THE RECEIPT DT 13/3/2007 SHOWING REMITTANCE OF REGISTRATION FEE VIDE RECEIPT NO. 25725.

P4: COPY OF THE COMMUNICATION DT 25/8/2007 ISSUED BY THE R2 TO THE R3.

P5: COPY OF THE DEED OF TRANSFER OF LEASE DT 9/3/2007 EXECUTED BETWEEN THE PETITIONER COMPANY AND M/S. DATAWARE DESINLABS (P) LTD.

P6: COPY OF THE RECTIFICATION DEED DT 20/2/2008 SUBMITTED BY THE PETITIONER BEFORE THE R4.

P7: COPY OF THE OBJECTION SLIP DT 20/2/2008 ISSUED BY THE R4 TO THE PETITIONER COMPANY.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A.TO JUDGE

bp

A.V.RAMAKRISHNA PILLAI, J

WPC No.9987 of 2008

Dated this the 18th day of November, 2015

JUDGMENT

The petitioner, a registered company under the Companies Act engaged in the business of Software Development and Export, is aggrieved by the denial of the benefit of exemption of registration charges and stamp duty in the matter of registration of lease deed in respect of the property purchased for setting up of a software unit for manufacture and export of software.

2. The petitioner is also aggrieved by the refusal signified by the 4th respondent in registering the rectification document for want of original previous document without considering the fact that the previous document has already been impounded for want of sufficient duty denying the benefit of remission/exemption of stamp duty and registration

charges announced by the Government.

3. In the counter affidavit filed by the first respondent, it was contended as follows:

The remission of registration fee and stamp duty payable is available for the registration of instruments executed for the transfer/lease/rent of land or built up space/building for establishing software parks and software units therein alone, whereas, the transfer in the instant case is of lease hold right over demised land in favour of the transferee together with the furniture and fittings of the electronic unit in their existing condition. The above instrument is styled as a deed of transfer executed by M/s Dataware Design Labs Pvt. Ltd. in the Technopark Campus in favour of M/s Aushim Soft Pvt. Ltd., Leela Baug, Andheri East, Mumbai. It is pointed out that as per the recitals in paragraphs 3 and 4 of the document marked as Ext.P5, the transferor is the lessee of plot No.71 in the Technopark Campus ad-measuring an area of 95 cents under lease deeds dated 19.6.1998 and 10.11.1998 executed by the Electronics Technology Park, Kerala (Technopark), the lessor. It is contended that the lease hold right in the land and the building constructed thereon is now transferred by the transferor M/s Dataware Design Labs Pvt.Ltd. in favour of M/s Aushim Soft Pvt. Ltd. It is recited in the document that this deed of transfer is exempted from payment of stamp duty as per G.O.(P) No.94/99/TD dated 28.6.1999 and is also exempted from registration fees as per G.O.(P) No.93/99/TD dated 28.6.1999.

It is further contended that the document was impounded under Section 33 of the Kerala Stamp Act, 1959 as it is not duly stamped. The registration fee and stamp duty remission granted by the Government as per Exts.P1 and P2 is of the registration of instruments executed for the transfer/lease/rent of land or built up space/building for establishing software parks and software units therein. The exemption was granted as per the Information Technology document published in April 1998 and as per the Budget speech 1999-2000 para 165.

It is further contended that the recitals in paragraph-10 vide page-6 of the instrument in question reveals that the document requires stamp duty at the rate of conveyance on the amount of consideration for the transfer under Article 56 of stamp schedule to the Kerala Stamp Act, 1959. The recitals are as follows: “Whereas the share holders of the transferor have at the extra ordinary meeting held on 8th March 2007 unanimously approved the transfer of the lease hold right over the said demised land and the ownership right over the said building in favour of the transferee”. Nowhere, it is stated in the deed that the transfer is for establishing software park or software unit in the land or building mentioned therein; it is contended.

It is evident from the recitals that the alleged document is a transfer of lease of land having an extent of 95 cents along with the ownership of the building including the furniture and other fittings of the electronic unit of the transferor. It is contended that in page-3 of Ext.P5, it is clearly mentioned that the petitioner company is engaged in the business of electronics. As such the document is not eligible for registration fee and stamp duty remission as provided in Exts.P1 and P2 as the eligibility is restricted to instruments executed for the transfer/lease/rent of land or built up space/building for etablishing software parks and software units alone. It is well settled that the intention to create exemptions must affirmatively appear and cannot be raised by implication and an exemption must be strictly construed in favour of the State. It is settled position of law that the exemption notification particularly in fiscal matters has to be strictly construed either because of legislative intention or on economic justification and the person claiming its benefit is obliged to satisfy that his claim is covered by the exemption notification. The notification has to be read in its entirety and not in parts. If exemption from duty is claimed, it is for the person claiming the benefit of the exemption to establish the conditions, which attract the applicability of the exemption. The first thing to be noticed is that the thing which is made liable to duty is an instrument and not the transaction. In order to determine whether a document is sufficiently stamped, the authority must look at the document itself as it stands and not at any collateral circumstances which may be shown in evidence.

4. Arguments have been heard.

5. The case advanced by the petitioner is that the petitioner company found that there was material omission in the contents of Ext.P5 by which the lease hold right of M/s Dataware Design Labs (P) Ltd. has been transferred to the petitioner. According to the petitioner, through an inadvertant error, clauses

referring to the fact that the petitioner company is a software unit and engaged in the business of establishing and setting up software parks and software units and the very transfer is for the purpose of Information Technology/Information Technology Enabled Services were omitted. Therefore, the petitioner sought to incorporate the following paragraphs in Ext.P5 by way of a rectification deed.

I. On page-3 of the Principal Deed, after the paragraph.

"AND WHREAS the TRANSFERER has at its cost set up an electronics unit on the said premises consisting of the said building and the demised land "insert/add the following:

WHEREAS the TRANSFERER has been registered with software Technology Parks of India Ltd. as a Software Unit and has been engaged in the manufacture and export of software:

II. On page-6 of the Principal Deed, after the paragraph "AND WHEREAS the transferor has obtained permission in writing of Electronics Technology Parks-Kerala (TECHNOPARK) under clause-9 of the Lease deeds dated 9th day of June 1998 and 10th day of November 1998 for the execution of this transfer deed in favour of the transferee and a copy of the said permission dated 7th March 2007 from the Lessor-Electronics Technology Parks-Kerala (TECHNOPARK) is annexed to this Deed" insert/add the following:

AND WHEREAS under the terms of the aforesaid permission dated 7th March 2007 granted by the Electronics Technology Parks-Kerala (TECHNOPARK), transfer is permitted only "for the purpose of Information Technology (I.T./Information Technology Enabled services (I.T.E.S.)";

AND WHEREAS the TRANSFEREE which is engaged in the business of establishing and setting up Software Parks and Software Units throughout the country proposes to utilise the land and building which is the subject matter of the present transfer for the purpose of establishing a Software Park thereon;

III. On page 7 of the Principal Deed, after paragraph 1, insert/add the following:

1A The transferee shall strictly abide by the conditions stipulated by Electronics Technology Parks-Kerala (TECHNOPARK) in their permission letter dated 7th March, 2007 and shall utilise the land and building which are transferred only for the purpose of establishing a Software Park".

6. Therefore, the petitioner submitted a Rectification deed before the 4th respondent for its due registration. The 4th respondent refused to register the rectification deed as per Ext.P7 which, according to the petitioner, is *ex facie* arbitrary and cannot be legally sustained.

7. The learned Senior Government Pleader would submit that mere acceptance of a document presented for registration would not tantamount the registration. According to the learned Senior Government Pleader, registration of a document is deemed to have been completed only after the registering officer makes the relevant endorsements on the document and necessary entries in the prescribed registers. It was argued by the learned Government Pleader that Ext.P5 has already been adjudged by the Land Revenue Commissioner as per Ext.P4 as a transfer of lease falling under the Article 56 of the Schedule to the Kerala Stamp Act, 1959 and

requires stamp duty at the rate of conveyance on the amount of consideration for the transfer.

8. According to the learned Government Pleader, the petitioner has prepared the rectification deed and presented it for registration with a view to circumvent this liability. It was also argued that as per Section 28 of the Registration Act, a rectification deed has to be dealt with and registered in the same manner as the original instrument which it rectifies. It is further argued that the registering officer cannot register a document impounded by him until it has been dealt with by the District Registrar/Collector. It was also argued that the petitioner is not entitled for remission/refund of registration charges and exemption from payment of stamp duty as envisaged under Exts.P1 and P2 Government Orders. It was pointed out that the petitioner has already remitted a sum of Rs.13,50,104/- towards registration charges and the document of lease deed has been impounded by the 4th respondent for non-payment of stamp duty

without extending the benefit of Ext.P3 Government Order.

9. It is crucial to note that the 4th respondent and for that matter all the respondents were aware of the fact that Ext.P5 document has been impounded and the original document is not in the custody of the petitioner company. Therefore, the insistence that the petitioner has to produce the original previous document for registering the rectification deed (Ext.P6) has no legal basis. It is not possible for the petitioner company to produce the original previous document while seeking rectification as it is in the custody of the respondents. Therefore, Exts.P4 and P7 are *ex facie* arbitrary and illegal and they were issued without application of mind and without affording an opportunity to the petitioner of being heard.

10. It is settled law that the impounding of a document for non-payment of stamp duty does not take away the right of the parties to seek its

rectification. Therefore, Ext.P7 is clearly unsustainable. Ext.P4 was passed misconstruing the exemption orders (Exts.P1 and P2) and without affording the petitioner an opportunity of being heard. In fact the petitioner is legally entitled to enjoy the exemption and remission as announced by the Government as per Exts.P1 and P2 Government Orders as it is engaged in the business of establishing and setting up software parks and software units and the said immovable property was acquired by the petitioner for the purpose of establishing a software park.

In the result, this writ petition is allowed. Exts.P4 and P7 are quashed. The respondents are directed to release and return the impounded document (Ext.P5) of the petitioner and the 4th respondent is directed to cause rectification deed at Ext.P6 registered immediately. The 4th respondent is also directed to refund the registration charges of Rs.13,50,104/- lakhs remitted by the petitioner within a period of three months from the date of receipt of a copy of this judgment. In case the respondents fail in returning the amount within the aforesaid time, the respondents are liable to pay interest at 12% per annum from the date on which the amount has been remitted by the petitioner till the amount is repaid.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

css/ true copy

P.S.TO JUDGE