BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 16.08.2016

CORAM

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P(MD)No.12679 of 2016

Hindustan Coca-Cola Beverages Private Limited,
having its office at No.7, Third Floor,
East India Chambers,
Valluvarkottam High Road,
Nungambakkam,
Chennai - 600 034
represented by its Manager(Legal)
Gowtham.S. ..Petitioner

Vs

1.The Chief Controlling Revenue Authority and
Inspector General of Registration,
Registration Department,
100, Santhome High Road,
Chennai - 600 008.

2.The Special Deputy Collector(Stamps),
Collectorate, Tirunelveli.

3.The Sub-Registrar,
Palliyadi,
Kanyakumari District. ..Respondents.

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the second respondent to accept the sum of Rs.36,24,640/- being claimed by them as deficient stamp duty with respect to the instrument viz., Sale Deed document bearing Registration No.2200/1999, registered on 16.11.1999 registered with the Third Respondent from the Petitioner and upon deposit of the aforesaid sum under under protest -(i) keep the same by way of an interest bearing fixed deposit and appropriate or refund the same subject to the final outcome of the adjudication proceedings under Section 47(A)(1) of the Indian Stamp Act and also the final outcome of C.M.A.No.501 of 2009; (ii) clear the encumbrance and release the charge pertaining to said property situated at No.12/5A, 12/5B, 12/5C, 12/5D, 12/5A1 and 12/5A2 of Vilavankode village, Palliyadi Taluk, Kanyakumari, Tamil Nadu, ad-measuring 2.356 Acres belonging to the Petitioner and thereby lift the charge over the property.

For Petitioner :M/s.T.Antony Arul Raj

For Respondents :Mr.S.Sadesh Kumar
Addl.Govt.Pleader

ORDER

Heard both sides.

2.By consent of both sides, the main Writ Petition itself is taken up for final disposal.

3.The Petitioner has preferred the present Writ Petition praying for passing of an order by this Court in directing the Second Respondent/The Special Deputy Collector(Stamps), Collectorate, Tirunelveli to accept the sum of Rs.36,24,640/- being claimed by them as deficient stamp duty with respect to the instrument namely sale deed document bearing Registration No.2200/1999 registered on 16.11.1999 registered with the Third Respondent from the Petitioner and upon deposit of the aforesaid sum under under protest -(i) keep the same by way of an interest bearing fixed deposit and appropriate or refund the same subject to the final outcome of the adjudication proceedings under Section 47(A)(1) of the Indian Stamp Act and also the final outcome of C.M.A.No.501 of 2009; (ii) clear the encumbrance and release the charge pertaining to said property situated at No.12/5A, 12/5B, 12/5C, 12/5D, 12/5A1 and 12/5A2 of Vilavankode Village, Palliyadi Taluk, Kanyakumari, Tamil Nadu, ad-measuring 2.356 Acres belonging to the Petitioner and thereby lift the charge over the property.

4.Earlier, on 8.8.2016, this Court in W.P(MD)No.12679 of 2016 at Para 6 had observed the following:

> *''6. In view of the fact that the Second Respondent / Special Deputy Collector (Stamps), Tirunelveli, has in his counter at paragraph No.12, had categorically mentioned among other things that the Petitioner is to pay Rs.36,26,640/- and the interest at the rate of 6% per annum, and also the Registration Fee at the rate of 1% to be paid by it, in the Government account, by means of challan, at this stage, this Court directs the Second Respondent / Special Deputy Collector (Stamps), Tirunelveli, to file a Memo before this Court, mentioning in clear terms, as to what exactly the stamp duty amount is to be paid by the Petitioner together with interest, if so at mentioning the rate of interest and also the Registration fee at the rate of 1%. In effect, Second Respondent / Special Deputy Collector (Stamps), Tirunelveli, is directed to calculate the same and to file the aforesaid details with necessary break up figures, both in qualitative*

and qualitative terms, within a period of one week herefrom.''

and directed the Registry to list the matter on 16.8.2016.

5.Today, when the matter has come up for hearing, at this stage, the Learned Additional Government Pleader had filed a Calculation Memo, which runs as under:

CALCULATION MEMO

1.W.P.Case No. :W.P(MD)No.12679 of 2016

2.Court :High Court, Madurai Bench,

3.Petitioner :M/s.Hindustan Cococola Beverages Private Limited, Nungambakkam, Chennai-34.

4.Respondents :1)Chief Controlling Revenue Authority & Inspector General of Registration Chennai-78.
2)Special Deputy Collector(Stamps), Tirunelveli.
3)Sub-Registrar,Palliyadi, Kanyakumari District.

5.Document No. : 2200/1999

6.Date of Registration : 16.11.1999

7.Final Order No. and Date passed by the second respondent : MU.Sa.X4/9243/2001

8.Deficit Stamp duty : Rs.36,26,640/-

9.Principal Amount : Rs.36,26,640/-

10.Interest at 6% : Rs.36,26,640x6%-100=
Per annum as per RR Act : Rs.2,17,598.40(or)Rs.2,17,599/-
Interest for one month : Rs.18,133.20(or)Rs.18,134/-

INTEREST

Grace period first two months = No interest
From 24.7.2006 to 23.9.2006
From 24.09.2006 to
31.12.2006(4 months x Rs.18,134/-) = Rs.72,536/-
2007
2008
2009
2010 9 years x Rs.2,17,599 = Rs.19,58,391/-
2011
2012

2013
2014
2015 01.01.2016 to
31.8.2016(8 months) x Rs.18,134/- = Rs.1,45,072

Interest upto 31.8.2016 Total Rs.21,75,999/-
Rs.21,75,999/-

Principal	:	Rs.36,26,640/-
Interest	:	Rs.21,75,999/-
Total	:	Rs.58,02,639

NB: Interest calculated till 31.8.2016.
If the deficit stamp duty remitted after 31.8.2016 further interest will be added.

Sd/-
Special Deputy Collector(Stamps)i/c
Tirunelveli.

6.From the above Calculation Memo filed on behalf of the Second Respondent, it is quite clear that the Petitioner is to pay a sum of Rs.58,02,639/- towards deficit stamp duty(as on 31.08.2016). Further, interest would be added to the principal sum of Rs.36,26,640/- if the payment is made beyond 31.08.2016.

7.It is to be noted that in the absence of an enforceable legal right no Mandamus can be sought for. Further, the existence of a legal right and the obligation of a public authority to satisfy the same on the date of petition are the conditions precedent to claim the relief of Mandamus, in the considered opinion of this Court. In short, 'For Issuance of Mandamus', the Petitioner must establish that he has a legal right to the performance of a legal duty. The duty that may be enjoined by Mandamus may be one imposed by the Constitution or the statute or the rules or orders having the force of Law. Moreover, the object of Article 226 of the Constitution of India is the enforcement and not the establishment of a right. Also, it is to be remembered that Article 226 of the Constitution of India cannot be converted into a suit.

8.considering the fact that the Petitioner/company is ready and willing to pay the sum of Rs.36,26,640/- towards principal and a sum of Rs.21,75,999/- towards interest(as informed by the Learned Counsel for the Petitioner) aggregating in all, is to pay a sum of Rs.58,02,639/- (and the interest as stated supra calculated till 31.8.2016), this Court, directs the Petitioner to pay a sum of Rs.58,02,639/- as per Calculation Memo(furnished by the Second Respondent) on or before 31.8.2016 towards deficit stamp duty(under head of account of DP Code 0030-02-103-AB.0008) with interest(under head of account of DP Code 0030-02-103-AC.0000) and deficit Registration Fee to the Government under protest. If the aforesaid payment is made by the Petitioner, then this Court hereby orders that on production of original deed along with original challan, necessary endorsements are directed to be entered into /made by the Second Respondent by mentioning to the effect that the entire amount due under Section 47(A) of the Indian Stamp Act, 1899 was paid and there is no amount due under the Indian Stamp Act. It is abundantly made clear that the charge on the property would get released by the Second Respondent automatically upon payment of the aforesaid sum of Rs.58,02,639/- and Encumbrance Certificate thereafter issued by the Third Respondent should contain the aforesaid details.

9.Before parting with the case, this Court makes it crystalline clear that it is open to the Petitioner/Company to claim refund of excess payment made, if any, as per the final outcome of C.M.A.No.501 of 2009, by applying before the authorities concerned, of course in accordance with Law and in the manner known to Law. Insofar as the second relief namely, in keeping the amount by means of interest bearing Fixed Deposit, this Court holds that the Petitioner has no judicially enforceable right and hence the same is not acceded to by this Court.

10.With the aforesaid observation(s) and direction(s), the Writ Petition stands disposed of. No costs.

Sd/
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To
1.The Chief Controlling Revenue Authority and
Inspector General of Registration,
Registration Department,
100, Santhome High Road,
Chennai - 600 008.
2.The Special Deputy Collector(Stamps),
Collectorate, Tirunelveli.
3.The Sub-Registrar,
Palliyadi,
Kanyakumari District.
+1 cc to MR.T.ANTONY ARUL RAJ, Advocate Sr.no.44721
+1 cc to Special Government Pleader Sr.No.449117

W.P(MD)No.12679 of 2016
16.08.2016

SMA/KP/SAR-AE/17/08/2016 :5P/6C