AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No.1528 of 2016

1. M/s. Raipur Bottling Company through its Partners: 1-Sucha Singh Rai, S/o Late Sadhu Singh Rai, aged about 63 years, R/o M-6, Anupam Nagar, Raipur, District Raipur (CG)
2. S. Gurpreet Singh Bhatia, S/o Shri S. Surjeet Singh Bhatia, aged about 45 years, R/o Kailash Nagar, Rajnandgaon, District Rajnandgaon (CG)
3. S. Satpal Singh Bhatia, S/o Shri S. Gulbeer Singh Bhatia, aged about 44 years, R/o Kailash Nagar, Rajnandgaon, District Rajnandgaon (CG)

----Petitioners

Versus

1. State of Chhattisgarh through Secretary, Department of Revenue, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (CG)
2. The Chhattisgarh Board of Revenue, through Secretary, Board of Revenue, Bilaspur, District Bilaspur (CG)
3. Collector of Stamps, Raipur, District Raipur (CG)

---- Respondents

For Petitioner	:	Mr.Ashish Surana, Advocate
For Res.No.1 and 3	:	Mr.Shashank Thakur, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

23/08/2017

1. Impugning legality, validity and correctness of the order dated 4.4.2016 (Annexure P/1) passed by the Board of Revenue partly affirming and partly setting aside the order of the Collector of Stamps, this writ petition under Article 226/227 of the Constitution of India has been filed by the petitioners herein.

2. The Essential facts requisite to judge the correctness of the plea raised at the Bar are as under:-

2.1 M/s. Raipur Bottling Company was the proprietary firm and Sucha Singh Rai was the exclusive proprietor. In order to have better management, expansion of business and finance, the sole proprietor firm was converted into partnership firm on 15.11.2013 and also induced S. Gurpreet Singh Bhatia and S. Satpal Singh Bhatia as partners apart from Sucha Singh Rai. Thereafter, the petitioners gave information to the District Excise Officer for amendment in the excise license granted to M/s. Raipur Bottling Company. The District Excise Officer reported the matter to the Collector of Stamps for payment of requisite stamp duty. Upon receipt of said information, on 23.7.2014 the Collector of Stamps registered the case under Section 33 read with Section 40 (1) (b) and 48-B of the Indian Stamp Act, 1899 (hereinafter called as 'Act of 1899') read with MP Amendment Act, 1990 and issued notices to the petitioners. The petitioners appeared and filed reply and made a prayer for dropping the said proceedings.

2.2 The Collector of Stamps by its order dated 30.8.2014 referring to the Article 46 of Schedule-1A [amended as per the Indian Stamp (Chhattisgarh Amendment Act 2013 w.e.f. 7th August, 2013] held that as per balance-sheet of the firm, valuation of assets and liabilities as ₹

9,71,71,358/-, the petitioner firm is liable to pay ₹ 19,43,450/- as stamp duty on the partnership deed and also imposed fine of ₹ 5000/- upon the petitioner firm.

2.3 Feeling aggrieved against that order, the petitioner firm preferred an application under Section 56(4) of the Act of 1899 before the Chief Revenue Controlling Authority (Board of Revenue). The said authority by its impugned order partly allowed the application remanding the matter back to respondent No.3 to proceed in accordance with the observation made in para 5.2 to 5.4 of the said order.

2.4 Questioning that order, this writ petition has been filed by the petitioners challenging the same as bad and unsustainable in law, in which return has been filed by the State opposing the writ petition. Rejoinder has also been filed, which is taken on record.

3. Mr.Ashish Surana, learned counsel appearing for the petitioners, would submit that instrument i.e. partnership deed dated 15.11.2013 was never produced before the District Excise Officer in terms of Section 33 (1) of the Act of 1899 and the District Excise Officer is not empowered to take evidence and unless two conditions precedent are fulfilled, no order for impounding could have been made by learned Collector of Stamps and as such, the order of the Collector of Stamps partly upheld by the Chief

Controlling Revenue Authority is liable to be set aside.

4. On the other hand, Mr.Shashank Thakur, learned State Counsel would support the impugned order.

5. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

6. In order to decide the dispute raised at the Bar and to judge the correctness of the submissions, it would be appropriate to notice Section 33 of the Act of 1899, which states as under:-

> "**33. Examination and impounding of instruments**.— (1) Every person having by law or consent of parties, authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.
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> (2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India when such instrument was executed or first executed:
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> Provided that—
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> (a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (5 of 1898);
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> (b) in the case of a Judge of a High Court, the duty

> of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.
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> (3) For the purposes of this section, in cases of doubt,—
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> (a) the State Government may determine what offices shall be deemed to be public offices; and
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> (b) the State Government may determine who shall be deemed to be persons in charge of public offices."

7. Thereafter, it would also be appropriate to notice Section 2 (14) of the Act of 1899 which defines the "instrument" which states as under:-

> "2 (14) Instrument.-"Instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished recorded."

8. At this stage, it would be appropriate to notice Section 48-B of the MP Amendment Act, 1990, which came into force w.e.f. 21.1.1991 which states as under:-

> "48-B. Original instrument to be produced before the Collector in case of deficiency.-Where the deficiency of stamp duty is noticed from a copy of any instrument, the Collector may, by order, require the production of original instrument from a person in possession or custody of the original instrument for the purpose of satisfying himself as to the adequacy of amount of duty paid thereon. If the original instrument is not produced before him within the period specified in the order, it shall be presumed that the original document is not duly stamped and the Collector may proceed in the manner provided in this Chapter:
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> Provided that no action under this section shall be taken after a period of five years from the date of execution of such instrument."

9. A focused glance of the provisions contained in Section 33 (1) of the Act of 1899 would show that when instrument in terms of Section 2 (14) of the Act of 1899 is produced or comes in the performance of his functions, then only Section 33 (1) is attracted and by virtue of Section 48-B of the MP Amendment Act 1990, the Collector of Stamps is empowered to direct for production of original instrument from a person in possession or custody of the original instrument for the purpose of satisfying himself as to the adequacy of amount of duty paid thereon.

10. At this stage, it would be appropriate to notice the nature of the Stamp Legislation. In the matter of **District Registrar and Collector, Hyderabad and another Vs. Canara Bank and others**[1] Their Lordships of the Supreme Court highlighting the nature of Stamp Legislation have held as under:-

> “10. Nature of stamp legislation Stamp Act is a piece of fiscal legislation. Remedial statutes and statutes which have come to be enacted on demand of the permanent public policy generally receive a liberal interpretation. However, fiscal statutes cannot be classed as such, operating as they do to impose burdens upon the public and are, therefore, construed strictly. A few principles are well settled while interpreting a fiscal law. There is no scope for equity or judiciousness if the letter of law is clear and unambiguous. The benefit of any ambiguity or conflict in different provisions of statute shall go for the subject. In Dowlatram Harji & Anr. Vs. Vitho Radhoji [ILR (1880) 5 Bom 188 (FB)] the Full Bench indicated the need for balancing the harshness which would be inflicted

1 (2005) 1 SCC 496

> on the subjects by implementation of the Stamp Law as against the advantage which would result in the form of revenue to the State; the latter may not be able to compensate the discontent which would be occasioned amongst the subjects.”

Their Lordships in **District Registrar** (supra) have further held that “instrument” cannot be compelled to be brought before him by the Collector. It was observed as under:-

> “12. The provisions of Section 29 providing for the persons by whom duties are payable have been left untouched. So is with Section 31 dealing with 'adjudication as to proper stamp' which confers power on the Collector to adjudicate upon the duty with which a document shall be chargeable, though such document may or may not have been executed. The scheme of Section 31 involves an element of voluntariness. The person seeking adjudication must have brought the document to Collector and also applied for such adjudication. The document cannot be compelled to be brought before him by the Collector. Section 33 confers power of impounding a document not duly stamped subject to the document being produced before an authority competent to receive evidence or a person incharge of a public office. It is necessary that the document must have been produced or come before such authority or person incharge in performance of its functions. The document should have been voluntarily produced. At the same time, Section 36 imposes an embargo on the power to impound, vesting in the authority competent to receive evidence, by providing that it cannot question the admission of document in evidence once it has been admitted. None of these provisions have been amended by the State of Andhra Pradesh.
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> 13. In Surajmull Nagoremull Vs Triton Insurance Co. Ltd. [AIR 1925 PC 83 : 52 IA 126}, Their Lordships of the Privy Council made it clear that the provisions of the Stamp Act cannot be held to have been framed solely for the protection of revenue and for the purpose of being enforced solely at the instance of the revenue officials.

> 14. Power to impound a document and to recover duty with or without penalty thereon has to be construed strictly and would be sustained only when falling within the four corners and letter of the law. This has been the consistent view of the Courts. Illustratively, three decisions may be referred. In Jai Devi Vs. Gokal Chand [(1906) 7 Punj LR 428 (FB)] a document not duly stamped was produced in the Court by the plaintiff alongwith the plaint but the suit came to be dismissed for non-prosecution. It was held by the Full Bench that the document annexed with the plaint cannot be said to have been produced in the Court in evidence and the court had no jurisdiction to call for the same and impound it. In Munshi Ram Vs. Harnam Singh, [AIR 1934 Lah 637(1)] the suit was compromised on the date of first hearing and decree was passed based on the compromise. The original entry in a bahi was not put in evidence and, therefore, the Special Bench held it was not liable to be impounded. In L. Puran Chand, Proprietor, Dalhousie Dairy Farm Vs. Emperor [AIR 1942 Lah 257] the power to impound was sought to be exercised after the decision in the suit and when the document alleged to be not duly stamped had already been directed to be returned as not proved though it was not physically returned. The Special Bench held that the document was not available for being impounded. ”

11. The phrase “is produced or comes in the performance of his functions” as employed in Section 33 of the Act of 1899 came up for consideration before the Supreme Court in the matter of the **<u>Government of Uttar Pradesh and others Vs. Raja Mohammad Amir Ahmad Khan</u>**[2] in which the Supreme Court has observed as under:-

> “5. After an inordinately long delay, the Collector determined the amount of duty payable and impounded the document. Power to impound is given in s. 33 of the Act. Under that section any Person who is a Judge or is in-charge of a public office before whom an instrument chargeable with duty is produced or comes in the performance of

2 AIR 1961 SC 787

his functions is required to impound the instrument if it appears to him not to be duly stamped. The question is does this power of impounding arise in the present case?. The instrument in dispute was not produced as a piece of evidence nor for its being acted upon e.g. registration, nor for endorsement as under Section 32 of the Stamp Act but was merely brought before the Collector for seeking his advise as to what the proper duty would be. The words "every person.......before whom any instrument.........is produced or comes in the performance of his functions" refer firstly to production before judicial or other officers performing judicial functions as evidence of any fact to be proved and secondly refer to other officers who have to perform any function in regard to those instruments when they come before them e.g. registration. They do not extend to the determination of the question as to what the duty payable is. They do not cover the acts which fall within the scope of Section 31, because that section is complete by itself and it ends by saying that the Collector shall determine the duty with which, in his judgment, the instrument is chargeable, if it is chargeable at all. Section 31 does not postulate anything further to be done by the Collector. It was conceded that if the instrument is unexecuted i.e. not signed, and the opinion of the Collector is sought, he has to give his opinion and return it with his opinion to the person seeking his opinion. The language in regard to executed and unstamped documents is no different and the powers and duties of the Collector in regard to those instruments are the same, that is, when he is asked to give his opinion, he has to determine the duty with which, in his judgment, the instrument is chargeable and there his duties and powers in regard to that matter end. Then follows Section 32. Under that section the Collector has to certify by endorsement on the instrument brought to him under Section 31 that full duty has been paid, if the instrument is duly stamped, or it is unstamped and the duty is made up, or it is not chargeable to duty. Under that section the endorsement can be made only if the instrument is presented within a month of its execution. But what happens when the instrument has been executed more than a month before its being brought before the Collector? Section 31 places no limitation in regard to the time and there is no reason why any time limit should be imposed in regard to seeking of opinion as to the duty payable."

12. Not only this, in the matter of **Hariom Agrawal Vs. Prakash Chand Malviya**[3] the Supreme Court while dealing with Sections 2 (14) of the Act of 1899 and 48-B of the MP Amendment Act 1990 has clearly held that the word "instrument" as employed in Section 2 (14) does not include copy. It was observed as under:-

> "8. The instrument as per definition under Section 2(14) has a reference to the original instrument. In State of Bihar v. M/s. Karam Chand Thapar & Brothers Ltd.[4], this Court in paragraph 6 of the judgment held as under :-
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> > 6. It is next contended that as the copy of the award in court was unstamped, no decree could have been passed thereon. The facts are that the arbitrator sent to each of the parties a copy of the award signed by him and a third copy also signed by him was sent to the court. The copy of the award which was sent to the Government would appear to have been insufficiently stamped. If that had been produced in court, it could have been validated on payment of the deficiency and penalty under S.35 of the Indian Stamp Act, 1899. But the Government has failed to produce the same. The copy of the award which was sent to the respondents is said to have been seized by the police along with other papers and is not now available. When the third copy was received in court, the respondents paid the requisite stamp duty under S.35 of the Stamp Act and had it validated. Now the contention of the appellant is that the instrument actually before the court is, what it purports to be, 'a certified copy', and that under Section 35 of the Stamp Act there can be validation only of the original, when it is unstamped or insufficiently stamped, that the document in court which is a copy cannot be validated and

3 (2007) 8 SCC 514
4 AIR 1962 SC 110

> 'acted upon' and that in consequence no decree could be passed thereon. The law is no doubt well- settled that the copy of an instrument cannot be validated. That was held in Rajah of Bobbili v. Inuganti China Sitaramasami Garu[5], where it was observed :
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> 'The provisions of this section (section 35) which allow a document to be admitted in evidence on payment of penalty, have no application when the original document, which was unstamped or was insufficiently stamped, has not been produced; and, accordingly, secondary evidence of its contents cannot be given. To hold otherwise would be to add to the Act a provision which it does not contain. Payment of penalty will not render secondary evidence admissible, for under the stamp law penalty is leviable only on an unstamped or insufficiently stamped document actually produced in Court and that law does not provide for the levy of any penalty on lost documents.'"
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> 10. It is clear from the decisions of this Court and a plain reading of Sections 33, 35 and 2(14) of the Act that an instrument which is not duly stamped can be impounded and when the required fee and penalty has been paid for such instrument it can be taken in evidence under Section 35 of the Stamp Act. Sections 33 or 35 are not concerned with any copy of the instrument and party can only be allowed to rely on the document which is an instrument within the meaning of Section 2(14). There is no scope for the inclusion of the copy of the document for the purposes of the Indian Stamp Act. Law is now no doubt well settled that copy of the instrument cannot be validated by impounding and this cannot be admitted as secondary evidence under the Indian Stamp Act, 1899."

13. Thus, the principle of law that flows from the aforesaid judgments (supra) is that the original instrument i.e. partnership deed must be produced before the authority concerned who is entitled to receive evidence and the

5 (1898-99) 26 IA 262

authority concerned must be the incharge of public office to attract the provisions contained in Section 33(1) of the Act of 1899.

14. Applying the principle of law laid down by the Supreme Court in the aforesaid judgments (supra) to the facts of the present case, it is quit apparent that in the present case, original partnership deed dated 15.11.2013 was never produced before the authority competent to receive the evidence and the person incharge of public office as only copy of partnership deed was produced before the District Excise Officer for making correction in the excise license. Therefore, twin conditions of production of original partnership deed as well as the authority to whom it was produced must be entitled to receive evidence both are not satisfied and even in exercise of Section 48-B of the MP Amendment Act 1990 the Collector of Stamps did not direct for production of said instrument in the alleged proceeding initiated by him, therefore, the order directing impounding of the document and levying the stamp duty in accordance with the provisions contained in Section 33 (1) of the Act of 1899, in the considered opinion of this Court, in absence of production of original instrument of partnership deed and in absence of production of the same before the authority to receive evidence and the person incharge of public office is wholly illegal and without authority of law. Learned Chief Revenue Controlling Authority has also committed illegality by partly upholding the order of the Collector of Stamps.

15. As a fallout and consequence of the aforesaid discussion, the order of the Chief Revenue Controlling Authority (Board of Revenue) partly upholding the order of the Collector of Stamps is hereby set aside. However, this will not bar the respondents to proceed in accordance with law.

16. The writ petition is allowed to the extent indicated hereinaboove. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-