IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 243 OF 2017

1. M/s Bharat Hotels Ltd.,
   a Company incorporated under the
   Companies Act, 1956 having its
   registered office at
   1) Barakhamba Lane,
      New Delhi – 110001.

   2) The Project Co-ordinator,
      M/s Bharat Hotels Ltd.,
      Raj Baga, Canacona, Goa.

2. Deeksha Holding Ltd.,
   a company incorporated under the
   Companies Act, 1956 having its
   registered office at
   401, World Trade Tower,
   New Delhi – 110 001
   Both represented by
   Mr. Joaquim G. P. Martins
   r/o Calsa Martins, Mastimol Road,
   Xeler, Canacona Goa. .. Petitioners

Versus

1. Secretary (Revenue)
   Government of Goa,
   Secretariat, Porvorim Goa.

2. The Commissioner of Excise,
   Government of Goa,
   Panaji Goa.

3. The Collector,
South Goa,
Margao,
Salcete Goa. ... Respondents

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. Somnath B. Karpe, Advocate for the petitioners.

Mr. Deep D. Shirodkar, Addl. Government Advocate for the respondents.

Coram:- F. M. REIS, J.

Date:- 6th April, 2017

ORAL JUDGMENT

Heard Mr. J. E. Coelho Pereira, learned Senior Counsel appearing for the petitioners and Mr. D. Shirodkar, learned Addl. Government Advocate appearing for the respondents.

2. Rule. Heard forthwith with the consent of the learned counsel.

3. Mr. D. Shirodkar, learned Addl. Government Advocate waives service on behalf of the respondents.

4. A short point for consideration in the above Writ Petition is whether the Revisional Authority was justified to direct the Collector to take action in terms of Section 33 of the Stamp Act, in respect of the documents produced before the Excise Commissioner.

5. Briefly, the facts of the case are that the petitioners filed an application for excise permission on the basis of the licence agreement executed in favour of the petitioners. In such proceedings, the Excise Commissioner has made a reference to the Collector to take action in respect of the stamp duty payable under the said Act. The learned Collector initiated proceedings under Section 47-A of the Stamp Act and proceeded to drop the proceedings as he has no jurisdiction to take action thereto. The respondent no.2 thereafter preferred a revision before the Revisional Authority whereby by the impugned order dated 17.01.2017 the revision was allowed and the matter was remanded to the Collector to take action in terms of Section 33 of the said Act.

6. Mr. Coelho Pereira, learned Senior Counsel appearing for the petitioners has taken me through the provisions of Section 33 of the said Act to point out that unless the document is impounded, the Collector has no jurisdiction to proceed to take action. The learned Senior Counsel further pointed out that exercising jurisdiction under Section 47-A of the said Act has been rightly rejected as no reference was made by the Sub-Registrar with that regard. The learned Senior Counsel in support of his submissions has relied upon the judgment of the Apex Court reported in ***(2007) 8 SCC 514*** in the case of ***Hariom Agrawal V/s Prakash Chand Malviya.***

7. On the other hand, Mr. Shirodkar, learned Addl. Government Advocate has supported the impugned order. The learned counsel submits that the Revisional Authority was justified to direct the Collector to proceed in terms of Section 33 of the Stamp Act as according to him the xerox copy of the document has already been impounded. The learned counsel further pointed out that there would be loss of revenue to the

State Government in case the Collector does not examine the stamp duty payable under the said Act.

8. I have considered the submissions of the learned counsel and I have also gone through the records. While disposing of the revision preferred by the respondent no.2, the Revisional Authority has found that the Collector has rightly dropped the show cause notice issued under Section 47-A of the said Act. Once this view was taken, the question of remanding the matter to examine the aspect under Section 33 of the Stamp Act would not at all be justified. On plain reading of Section 33, it clearly provides that the document has to be impounded and only thereafter the document has to be referred to the Collector for necessary action. Admittedly, the records reveal that the document was not been impounded and consequently, the question of the Collector invoking the jurisdiction under Section 33 of the Stamp Act would not at all be justified. The learned Revisional Authority has exceeded its jurisdiction while issuing such direction which call for interference of this Court under

Article 227 of the Constitution of India.

9. With regard to the contention of the learned Addl. Government Advocate that there would be loss to revenue to the State Government, the authority if so advised are at liberty to take necessary action in accordance with law with that regard.

10. In such circumstances, subject to the above, the impugned order dated 17.01.2017 passed by the Revisional Authority is quashed and set aside. Rule is made absolute in the above terms. The petition stands disposed of accordingly.

F. M. REIS, J.

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