

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

Writ Petition No. 2152 of 2005

Between

M/s Rama Lace Industries, Hyderabad,
Rep. by its Partners K. Narender Kumar and
K. Raghavendra Kumar

.... Petitioner

And

The Chief Controlling Revenue Authority and
Inspector General of Registration and Stamps,
A.P., Hyderabad and others

... Respondents

JUDGMENT PRONOUNCED ON

: 15.06.2017

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

:

1. Whether Reporters of local Newspapers : YES
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : YES
marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : YES
see the fair copy of the Judgment?

* THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

+ Writ Petition No. 2152 of 2005

% 15.06.2017

M/s Rama Lace Industries, Hyderabad,
Rep. by its Partners K. Narender Kumar and
K. Raghavendra Kumar

..Petitioner

Vs.

\$ The Chief Controlling Revenue Authority and
Inspector General of Registration and Stamps,
A.P., Hyderabad and others

... Respondents

!Counsel for the Petitioner : Sri Jalli Kanakaiah

^ Counsel for the Respondents 1 to 3 : GP for Revenue
Counsel for Respondent No.4 : Sri L. Prabhakar Reddy

< Gist :

> Head Note :

? Cases referred:



HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 2152 of 2005

Order:

Heard learned counsel for the petitioner, learned Government Pleader for the respondents 1 to 3 and learned Standing Counsel for the fourth respondent.

The petitioner entered into an agreement of sale with the fourth respondent for purchase of a shed in an extent of 1092.12 sq. meters for an amount of Rs.15,96,163/- for its industrial purpose on 08.02.2002. Stamp duty of Rs.55,900/- was paid at the time of agreement. Thereafter, the fourth respondent executed a sale deed on the same day and an amount of Rs.40,000/- was collected towards stamp duty. The petitioner claimed exemption from stamp duty of 50% by relying on G.O.Ms.No.103, Revenue Department, dated 07.02.2001, in view of the purchase being for industrial unit. In those circumstances, the documents were given pending registration No.P9/2002 on 09.03.2002 and the matter was referred to the District Registrar on 19.03.2002 itself. The District Registrar clarified on 14.05.2002 that the agreement of sale is not covered by G.O.Ms.No.103, dated 07.02.2001. On receipt of such communication, the petitioner was asked to pay the deficit stamp duty of Rs.55,855/- and deficit registration fee of Rs.7,585/- on agreement of sale and registration fee of Rs.3,845/- on sale deed. The petitioner was asked to remit the said amount within seven days. Accordingly, the petitioner paid the said amount and the documents were registered. Thereafter, the petitioner filed an application before the first respondent under Section 45 of the Indian Stamp Act, 1899 (for short 'the Act') claiming refund of excess amount collected by the second respondent on the documents

submitted by him. The petitioner placed reliance on the self same G.O.Ms.No.103 dated 07.02.2001. The application of the petitioner was dismissed by the first respondent by order dated 17.01.2005. Challenging the same, the present Writ Petition was filed.

The only point that arises for consideration in the present Writ Petition is whether the order passed by the first respondent dismissing the application of the petitioner as not maintainable under Section 45 of the Act is valid or not.

The first respondent passed the order as follows:

“At the outset the claim is not entertainable u/s 45 as the document is neither referred by any court for determining stamp duty nor impounded by the Collector for deficit stamp duty in which case alone section 35 & 40 would come into play. It was presented before the registering officer on due execution and the former processed it u/s 41 while registering the deed.

Section 45(2) of the Indian Stamp Act, 1899 empowers the Chief Controlling Revenue Authority to refund the stamp duty in excess of which is legally chargeable has been charged and paid under Section 35 or 40. In the instant case, the amount was voluntarily paid under section 41 which does not come under the ambit of section 45(2).”

Section 45 of the Indian Stamp Act, 1899 reads as follows:

“45. Power to Revenue authority to refund penalty or excess duty in certain cases.—

(1) Where any penalty is paid under section 35 or section 40, the Chief Controlling Revenue-Authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

(2) Where, in the opinion of the Chief Controlling Revenue-Authority, stamp-duty in excess of that which is legally chargeable has been charged and paid under section 35 or section 40, such authority may, upon application in writing made within three months of the order charging the same, refund the excess.”

Hence, a reading of the above provision makes it clear that the power can be exercised by the authority only when the excess stamp duty

was paid under Sections 35 or 40 of the Act and in the instant case the stamp duty was not paid in the circumstances mentioned in the said sections. Section 35 of the Act deals with the instruments chargeable with duty admitted in evidence. Section 40 of the Act deals with the impounded documents. In the instant case those two situations did not arise. The deficit stamp duty was asked to be paid under Section 41 of the Act. Hence, as rightly pointed out by the first respondent, on intimation of deficit stamp duty the petitioner voluntarily paid the stamp duty under Section 41 of the Act and accordingly it does not come under the ambit of Section 45(2) of the Act. If the petitioner was aggrieved of the demand of deficit stamp duty, he should have availed the remedies at that point of time by challenging the order of the second respondent, but after paying the amount voluntarily he cannot seek refund of the stamp duty under Section 45(2) of the Act. In the circumstances, the order of dismissal passed by the first respondent is valid in law.

The Writ Petition is, accordingly, dismissed. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions pending in this Writ Petition, if any, shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 15.06.2017
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