

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.147 of 2018

(Arising out of order dated 24-11-2017 passed by the Board of Revenue, Chhattisgarh, Bilaspur in Case No.R.N./02/R/S.A./B-103/232/2016)

Order reserved on: 13-3-2018

Order delivered on: 6-4-2018

1. M/s. S.K. Samanta & Co. (Pvt.) Ltd., having its registered office at Suite No.4A, 2/5 Sarat Bose Road, Kolkata (West Bengal) through Authorized Signatory Sh. S. Biswas, S/o Sh. N.C. Biswas, R/o Suite No.4A, 2/5 Sarat Bose Road, Kolkata (West Bengal)
2. Shri S. Biswas, age about 69 years, S/o Shri N.C. Biswas, R/o Suite No.4A, 2/5 Sarat Bose Road, Kolkata (West Bengal)

--- Petitioners

Versus

1. State of Chhattisgarh through the Secretary, Department of Revenue, Mahanadi Bhawan, Capitol Complex, Naya Raipur (C.G.)
2. The Collector of Stamps, Bilaspur (C.G.)
3. The Sub-Registrar, Bilaspur (C.G.)
4. Chhattisgarh State Industrial Development Corporation, Raipur (C.G.)
5. Board of Revenue, Bilaspur (C.G.)

---- Respondents

For Petitioners:	Mr. B.P. Sharma, Mr. Hari Agrawal and Mr. Raza Ali, Advocates.
For Respondents No.1 to 3 / State: -	Mr. Shashank Thakur, Govt. Advocate.
For Respondent No.4:	Mr. Ayaz Naved, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. M/s. Shakti Development Private Limited, a company registered under the provisions of the Indian Companies Act, 1956 (for short, 'the Act of 1956') was granted lease on 28-5-2008 by the Chhattisgarh State Industrial Development Corporation Limited, responded No.4 herein,

in respect of land admeasuring 12.856 hectares located at Industrial Area, Silpahari, Bilaspur. By passage of time, the said Company went into financial losses and it was proposed to be amalgamated with the parent Company known as M/s. S.K. Samanta & Co. Private Limited. Accordingly, proceeding under Section 394 of the Companies Act was initiated before the High Court of Calcutta in Company Case No.711/2013 and ultimately, by order dated 18-7-2014, by the order of the Calcutta High Court, M/s. Shakti Development Private Limited was amalgamated with M/s. S.K. Samanta & Co. Private Limited, petitioner No.1 herein by the order of said Court.

2. Thereafter, M/s. S.K. Samanta & Co. Private Limited, petitioner No.1 herein, made an application to the CSIDC that name of M/s. S.K. Samanta & Co. Private Limited be incorporated / substituted in place of M/s. Shakti Development Private Limited in lease deed dated 28-5-2008. The CSIDC after examining the matter, executed a deed of amendment dated 12-11-2014 proposing change of name in the said lease deed and the said amendment deed dated 12-11-2014 was produced before the Office of the Sub-Registrar, Bilaspur by the petitioner and the CSIDC jointly for the purpose of registration. Upon examination, the Sub-Registrar, Bilaspur holding the said amendment deed to the original lease deed to be a new lease deed and amendment sought to be of substantial nature, made a reference to the Collector of Stamps for exercising power under Section 33 read with Section 48(b) of the Indian Stamp Act, 1899 (for short, 'the Act of 1899') for recovery of deficit stamp duty. The Collector of Stamps by order dated 8-12-2015 directed the petitioner Company to produce the original order of amalgamation passed by the High Court of

Calcutta, but that was not produced. However, the Collector of Stamps proceeded to examine the matter and by order dated 9-3-2016 held that the amendment deed dated 12-11-2014 is an instrument holding it to be a new lease deed and consequently ascertained the value of the transferred property in favour of the petitioner Company to be as ₹ 32,31,57,118/- and held the petitioner liable to pay ₹ 2,19,86,427/- as stamp duty on the deed of amendment and also imposed a fine of ₹ 5,000/- upon the petitioner Company under Section 33 read with Section 40(b) of the Act of 1899.

3. Feeling aggrieved and dissatisfied with the order of the Collector of Stamps, the petitioner Company preferred a revision under Section 56(4) of the Act of 1899 before the Chief Controlling Revenue authority (Board of Revenue) and the said authority not only dismissed the revision petition, but also remanded the matter back to responded No.2 for initiating two separate proceedings for imposition of stamp duty keeping in mind the findings recorded therein within a period of two months.
4. Assailing the order passed by the Chief Controlling Revenue authority, the instant writ petition has been preferred on the ground that the order passed by the Collector of Stamps as affirmed by the Chief Controlling Revenue authority is unsustainable and bad in law, as in absence of production of original order of amalgamation which has not been produced voluntarily by the petitioner, the order of impounding could not have been passed by the Collector of Stamps. It is further pleaded that Section 48(b) of the Act of 1899 does not authorise the Collector of Stamps to impound a copy of the instrument. Therefore, the order of the Collector of Stamps and that

of the Chief Controlling Revenue authority deserve to be quashed.

5. Return has been filed by the State/respondents No.1 to 3 controverting the statement made in the writ petition supporting the order passed by the Collector of Stamps and the Board of Revenue.
6. Respondent No.4 has filed its return supporting the petitioners.
7. Mr. B.P. Sharma, learned counsel appearing for the petitioners, ably assisted by Mr. Hari Agrawal, Advocate, would submit that the petitioner Company has only made an application for amendment in the original lease deed proposing change in the name of the petitioner Company in place of M/s. Shakti Development Private Limited in view of the order of amalgamation and impounding under Section 33 of the Act of 1899 was never sought by the petitioner Company by producing the original instrument relating to amalgamation, therefore, no proceeding under Section 33 could have been initiated or impounding the said document, only amendment in the lease deed which has been validly executed by them has been sought for which could have been considered and payment of stamp duty, if any, could have been directed for amendment in the lease deed already executed in favour of the erstwhile company i.e. M/s. Shakti Development Private Limited. He would further submit that Section 48-B of the Act of 1899 does not authorise the Collector of Stamps to impound a copy of instrument which was never produced before the said authority under Section 33 of the Act of 1899. Reliance is placed on **Hariom Agrawal v. Prakash Chand Malviya**¹.
8. Mr. Shashank Thakur, learned Govt. Advocate appearing on behalf of the State of Chhattisgarh, would submit that the erstwhile Company

¹ (2007) 8 SCC 514

i.e. M/s. Shakti Development Private Limited in whose favour the lease deed was executed way back on 28-5-2008 having been amalgamated with the petitioner Company under the provisions of the Act of 1956 by the orders of the Calcutta High Court, ought to have paid the requisite stamp duty under the provisions of the Act of 1899 and once the amendment deed was produced and it has been noticed by the Sub-Registrar that valid reference was made to the Collector of Stamps for proceeding under Section 33 of the Act of 1899 and finding that the said document is deficient in requisite stamp duty, impounding of instrument has been done in accordance with Section 33 read with Section 40(1)(b) of the Act of 1899 taking the aid of Section 48(b) of the Act, as despite the order of production of the original order of amalgamation, the said amalgamation deed was not produced. He would further submit that the Board of Revenue after threadbare consideration has rightly not interfered and rightly remanded the matter to the Collector of Stamps which does warrant interference in exercise of jurisdiction under Article 226 of the Constitution of India.

9. Mr. Ayaz Naved, learned counsel appearing for respondent No.4 – CSIDC would adopt the stand taken by Mr. B.P. Sharma, learned counsel for the petitioners.
10. I have heard the learned counsel for the parties and given thoughtful consideration to the submissions made herein and went through the record critically and carefully as well.
11. The Indian Stamp Act, 1899 is an act to consolidate the law relating to stamps. It is well settled law that in order to determine whether any, and if any, what stamp duty is chargeable upon an instrument the

legal rule is that the real and true meaning of the instrument is to be ascertained, that the description of it given in the instrument, itself by the parties is immaterial. (See The Madras Refineries Ltd. v. The Chief Controlling Revenue Authority, Board of Revenue, Madras² followed in Prasad Technology Park (P) Ltd. v. Sub-Registrar and others³.)

12. Nature of stamp legislation was noticed by the Supreme Court in the matter of District Registrar and Collector, Hyderabad and another v. Canara Bank and others⁴. Their Lordships of the Supreme Court highlighting the nature of stamp legislation have held as under: -

“10. The 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 to the subject. In *Dowlatram Harji v. Vitho Radhoji*⁵ the Full Bench indicated the need for balancing the harshness which would be inflicted 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.”

13. The Collector of Stamps held the deed of amendment as “conveyance” defined in Schedule I-A, Article 23 read with Section 2 (10) of the Act of 1899 and charged 5% stamp duty of market value of the property of company under Section 4 of the Act of 1899 and directed payment of deficit stamp duty of ₹ 2,19,86,427/- along with

2 (1977) 2 SCC 308

3 (2006) 1 SCC 473

4 (2005) 1 SCC 496

5 ILR (1880) 5 Bom 188 (FB)

fine of ₹ 5,000/- as per Section 33 read with Section 40(1)(b) of the Act of 1899.

14. Section 33 of the Act of 1899 provides 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.

Provided that nothing contained in this sub-section shall be deemed to authorise the Collector to impound any instrument which has not been executed but is brought to him under section 31 for determining the duty with which the instrument is chargeable or any instrument which he is authorised to endorse under section 32.

(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 law in force in India when such instrument was executed or first executed :

Provided that—

(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);

(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.

(3) For the purposes of this section, in cases of doubt,—

(a) the State Government may determine what offices shall be deemed to be public offices; and

(b) the State Government may determine who shall be deemed to be persons in charge of public offices.”

15. A focused glance of the above-stated provision would show that it is

power and jurisdiction of impounding an instrument by an authority, who is empowered to receive evidence before whom any instrument chargeable in his opinion with duty is produced or comes in the performance of his function and if it appears to him that such instrument is not duly stamped.

16. The word “instrument” is defined in Section 2(14) of the Act of 1899 as under: -

“(14) “Instrument” includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded;”

17. The question is whether copy of instrument is included in the definition of “instrument”. The Supreme Court in the matter of Jupudi Kesava Rao v. Pulavarthi Venkata Subbarao and others⁶ has clearly held that definition of “instrument” does not cover copy of document for purposes of Act. It was observed as under: -

“13. ... Section 35 (*sic*) is not concerned with any copy of an instrument and a party can only be allowed to rely on a document which is an instrument for the purpose of Section 35. 'Instrument' is defined in Section 2(14) as including every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded. There is no scope for inclusion of a copy of a document as an instrument for the purpose of the Stamp Act.”

18. In Hariom Agrawal (supra), Their Lordships of the Supreme Court relying upon its earlier pronouncement clearly held that the word 'instrument' as employed in Section 2(14) does not include copy. It was succinctly held as under: -

“8. The instrument as per definition under [Section 2\(14\)](#) has a reference to the original instrument. In [State of Bihar v. Karam Chand Thapar & Bros. Ltd.](#)⁷ this Court in para 6 of the judgment held as under: (AIR P. 113)

⁶ (1971) 1 SCC 545

⁷ AIR 1962 SC 110

"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 Section 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 Section 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 '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*⁸ where it was observed:

'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.'

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

8 (1898-99) 26 IA 262

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 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 Stamp Act, 1899.”

19. From the above-said legal analysis, it is quite vivid that photocopy of a document is not an instrument within the meaning of Section 2(14) of the Act of 1899, therefore, the provisions of Section 33(1) of the Act of 1899 providing for impounding of any instrument chargeable with duty cannot be invoked in respect of copy of document.
20. The stand and contention of learned State counsel is that the order of the Calcutta High Court sanctioning the scheme of amalgamation of two companies passed by the Company Court under Section 394 read with Section 391 of the Companies Act is an “instrument” within the meaning of Section 2(14) of the Indian Stamp Act, 1899, it being based on compromise or arrangement and effecting transfer of assets and liabilities between the parties, therefore, it has rightly been imposed with stamp duty by the learned Collector of Stamps. Learned State counsel relied upon the judgment of the Supreme Court in the matter of Hindustan Lever and another v. State of Maharashtra and another⁹.
21. In the matter of Ruby Sales and Services (P) Ltd. and another v. State of Maharashtra and others¹⁰, the Supreme Court has held that the consent decree which purports to convey the title in the property is an instrument liable for stamp duty at all times and it was only by way of abundant caution that the legislature had included the

⁹ (2004) 9 SCC 438

¹⁰ (1994) 1 SCC 531

consent decree in the definition of the word “conveyance”.

22. The Supreme Court in the matter of Hindustan Lever (supra) has held that order of amalgamation of two companies passed by the Court under Section 394 of the Act of 1956 is an “instrument” which transfers the properties and would fall within the definition of Section 2(1) of the Bombay Stamp Act, 1958 which includes every document by which any right or liability is transferred. It was observed as under: -

“32. In view of the aforesaid discussion, we hold that the order passed by the Court under [Section 394](#) of the Companies Act is based upon the compromise between two or more companies. Function of the court while sanctioning the compromise or arrangement is limited to oversee that the compromise or arrangement arrived at is lawful and that the affairs of the company were not conducted in a manner prejudicial to the interest of its members or to public interest, that is to say, it should not be unfair or contrary to public policy or unconscionable. Once these things are satisfied the scheme has to be sanctioned as per the compromise arrived at between the parties. It is an instrument which transfers the properties and would fall within the definition of [Section 2\(l\)](#) of the Bombay Stamp Act which includes every document by which any right or liability is transferred. The State Legislature would have the jurisdiction to levy stamp duty under Entry 44, List III of the Seventh Schedule of the Constitution of India and prescribe rates of stamp duty under Entry 63 List II.”

23. Thus, on the aforesaid basis, the order of amalgamation of two companies can be said to be instrument for the purpose of Section 2(14) read with Section 33(1) of the Act of 1899. But, in the present case, original instrument was never produced before the authority empowered to impound the said document for the purpose of impounding and charging deficit stamp duty. Therefore, it could not have been impounded by the said authority under Section 33(1) of the Act of 1899, as copy of instrument cannot be subjected to proceeding under Section 33(1) of the Act of 1899.

24. Faced with this situation, learned State counsel would submit that the

petitioner Company was asked to produce the original order of amalgamation by order of the Collector of Stamps dated 8-12-2015, but it was not produced by the petitioner, therefore, Section 48-B of the Act of 1899 (State amendment) would attract and the petitioner has rightly been imposed duty under Section 33(1) of the Act 1899.

25. Section 48-B of the Act of 1899 is a provision applicable in the State of M.P. (now Chhattisgarh) also inserted by the Stamp (M.P. Amendment) Act, 1990 in Chapter IV under the heading "Instruments not duly stamped", which provides 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 in 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 :

Provided that no action under this section shall be taken after a period of five years from the date of execution of such instrument."

26. The above-stated provision came-up for consideration before the Supreme Court in Hariom Agrawal (supra) in which Their Lordships have clearly held that Section 48-B of the Act of 1899 does not relate to the original instrument to be presented and this provision does not authorise the Collector to impound the copy of instrument and held as under: -

"19. On a plain reading of [Section 48-B](#), we do not find that the submission of the learned counsel for the appellant that by virtue of this provision the Collector has been authorised to impound even copy of the instrument, is correct. Under this section where the deficiency of stamp duty is noticed from the copy of any instrument, the Collector may call for the original document for inspection, and on failure to produce the original instrument could

presume that proper stamp duty was not paid on the original instrument and, thus, recover the same from the person concerned. [Section 48-B](#) does not relate to the instrument i.e. the original document to be presented before any person who is authorised to receive the document in evidence to be impounded on inadequacy of stamp duty found. The section uses the phraseology "where the deficiency of stamp duty is noticed from a copy of any instrument". Therefore, when the deficiency of stamp duty from a copy of the instrument is noticed by the Collector, the Collector is authorised to act under this section. On deficiency of stamp duty being noticed from the copy of the instrument, the Collector would order production of original instrument from a person in possession or in custody of the original instrument. Production is required by the Collector for the purpose of satisfying himself whether adequate stamp duty had been paid on the original instrument or not. In the notice given to person in possession or in custody of original instrument, the Collector shall provide for time within which the original document is required to be produced before him. If, in spite of the notice, the original is not produced before the Collector, the Collector would draw a presumption that original document is not duly stamped and thereafter may proceed in the manner provided in Chapter IV. By virtue of the proviso, the step for recovery of adequate stamp duty on the original instrument on insufficiency of the stamp duty paid being noticed from the copy of the instrument, can only be taken within five years from the date of execution of such instrument. The words "the Collector may proceed in the manner provided in this Chapter" have reference to [Section 48](#) of the Act. Under this section, all duties, penalties and other sums required to be paid under Chapter IV, which includes stamp duty, would be recovered by the Collector by distress and sale of the movable property of the person who has been called upon to pay the adequate stamp duty or he can implement the method of recovery of arrears of land revenue for the dues of stamp duty. By virtue of proviso to [Section 48-B](#), the Collector's power to adjudicate upon the adequacy of stamp duty on the original instrument on the basis of copy of the instrument is restricted to the period of five years from the date of execution of the original instrument. This section only authorises the Collector to recover the adequate stamp duty which has been avoided at the time of execution of the original instrument. This section does not authorise the Collector to impound the copy of the instrument."

27. The State of Andhra Pradesh had made amendment in the Act of 1899 which included power to conduct search and seizure of invalidly stamped document, which was challenged successfully before the

High Court. In an appeal filed by the State of Andhra Pradesh, the Supreme Court in **Canara Bank's** case (supra) held that the Act is fiscal legislation and imposed burden on public and therefore it has to be construed strictly and 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 in charge of a public office. It is necessary that the document must have been produced or come before such authority or person in charge 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.”

28. Their Lordships in above-stated judgment (quoted paragraph) has emphasized that while exercising the power of impounding under Section 33 of the Act of 1899, the authority competent and the authority to receive evidence or a person in charge of public office cannot compel a person to produce “instrument”. The instrument has to be produced voluntarily. The Supreme Court approved two judgments of the Lahore High Court in the matters of **Jai Devi v. Gokal Chand**¹¹ and **Munshi Ram v. Harnam Singh**¹².

29. Reverting to the factual score of the case in hand after noticing the

11 (1906) 7 Punj LR 428 (FB)

12 AIR 1934 Lah 637 (1)

legal position, it is quite vivid that the petitioner Company and the CSIDC jointly presented an amendment deed for amendment in lease deed to the Collector of Stamps after amalgamation order of the Calcutta High Court amalgamating erstwhile Company to the present petitioner Company, as it was not a proceeding under Section 33 of the Act of 1899 for impounding the instrument relating to amalgamation of companies, as evidently, the original instrument of amalgamation was not produced, only copy of the said instrument was produced after order of the Collector of Stamps. Since copy of the instrument is not an instrument within the meaning of Section 2(14) read with Section 33(1) of the Act of 1899, therefore, it could not have been impounded under Section 33(1) of the Act for obvious two reasons, firstly photocopy of the instrument is not covered by Section 2(14) read with Section 33(1) of the Act of 1899 and secondly, it was not produced voluntarily as held by Their Lordships of the Supreme Court in Jupudi Kesava Rao (supra) followed in Hariom Agrawal (supra). Section 48-B of the Act of 1899 as amended by the State of Madhya Pradesh cannot be invoked to impound photocopy of an instrument as held again in Hariom Agrawal (supra). Consequently, the order of the Collector of Stamps impounding the said instrument affirmed by the Chief Controlling Authority deserves to be quashed.

30. There is an additional reason for not upholding the impugned order. In respect of the instrument relating to amalgamation of companies under order of the High Court under Sections 394 and 391 of the Act of 1956, the duty chargeable has been provided by amendment in Schedule I-A – Article 23 by Chhattisgarh Act No.4 of 2005 with effect

from 12-5-2005, which states as under: -

Description of Instruments	Proper Stamp-duty
23. Conveyance , not being a transfer charged or exempted under No.62 irrespective of the market value of the property which is the subject matter of conveyance.	Seven and half per cent of such market value : xxx xxx xxx xxx xxx xxx xxx xxx xxx Provided further that, where an instrument relates to the amalgamation or reconstruction of companies under orders of the High Court under section 394 read with section 391 of the Companies Act, 1956 (1 of 1956) or under orders of the Reserve Bank of India under section 44-A of the Banking Regulation Act, 1949 (19 of 1949), the duty chargeable shall not exceed an amount equal to 7.5% of the market value of the immovable property transferred which is located within the State of Chhattisgarh or an amount equal to 0.7% of the aggregate of the market value of the shares issued or allotted in exchange or otherwise and the amount of consideration paid for such transfer, whichever is higher.

31. Thus, the instrument relating to amalgamation of companies is chargeable with duty equal to 7.5% of the market value of the immovable property transferred which is located within the State of Chhattisgarh, but in the present case, entire property of the company situated even outside the State of Chhattisgarh has been charged with duty which is impermissible and unsustainable in law, in view of the above-stated provision.
32. On the basis of above-stated analysis, I am of the considered opinion that in absence of production of original instrument relating to amalgamation of companies under orders of the High Court under Section 394 read with Section 391 of the Act of 1956 having been

produced voluntarily before the Collector of Stamps, the order of impounding of the instrument under Section 33(1) of the Act of 1899, could not have been passed by the Collector of Stamps and same could not have been affirmed by the Chief Controlling Revenue authority, both the orders are liable to be set aside and are accordingly set aside.

33. As a consequence, the matter is remitted to the Collector of Stamps to consider afresh the matter and to decide levy of stamp duty on the amendment deed in lease strictly in accordance with law expeditiously, preferably within a period of three months from the date of receipt / production of a copy of this order.

34. The writ petition is allowed to the extent sketched herein-above leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge