IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7094 OF 2017

Ambrosia Enviro Farms Pvt. Ltd. .. Petitioner
Vs.
Chief Controlling Revenue Authority &
Inspector General of Registration and
Controller of Stamps, Maharashtra & Ors. .. Respondents

Mr.Sunil Karandikar i/by Mr.Makarand B. Savant for the petitioner.
Ms.K.N.Solunke, AGP for the respondent nos.1 to 3.

CORAM : R.D. DHANUKA, J.
DATE : 7th June 2018

P.C.:

. Rule. Learned AGP waives service for the respondent nos.1 to 3. By consent of the parties, writ petition is heard finally.

2. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the orders dated 24th September 2014 and 29th February 2016 passed by the authorities rejecting the application filed by the petitioner for seeking refund of the stamp duty paid by the petitioner which application is made under Section 48(1) of the Maharashtra Stamps Act, 1958.

3. Admittedly, the petitioner has purchased Special Adhesive Stamps through franking of Rs.10,48,500/- on 20th May 2010 from I.D.B.I. Bank, Chembur, Mumbai 400 071.

4. The petitioner made an application for refund of the said stamp duty paid by the petitioner on various grounds. The said application for refund of stamp duty was admittedly received by the authority on 18th November 2010. Inadvertently, there was no date mentioned on the said application made by the petitioner. The application of the petitioner was admittedly forwarded to the office of the Additional Controller of Stamps, Mumbai by the respondent no.3 with remarks to grant the refund of stamp duty of Rs.10,48,500/- to the petitioner. The respondent no.2 in turn forwarded the case of the petitioner to the respondent no.1 with recommendation to refund the stamp duty to the petitioner.

5. The respondent no.1 however made certain observations and passed an order that the petitioner was not eligible for grant of refund of the stamp duty of Rs.10,48,500/- and passed order dated 24th September 2014 rejecting the claim of the petitioner on the ground of limitation. The petitioner preferred an appeal under Section 53(1A) of the Maharashtra Stamps Act, 1958 impugning the order dated 24th September 2014. The Appellate Authority however rejected the appeal on the ground that the appeal is not maintainable in view of the fact that the said order which was impugned in the said appeal was passed by the same authority. The petitioner preferred this writ petition under Article 227 of the Constitution of India.

6. The learned counsel for the petitioner invited my attention to the documents annexed to the petition including the application made by the petitioner for refund of stamp duty and acknowledgment issued by the authorities. He submits that the Special Adhesive Stamps were

admittedly purchased on 20th May 2010 from I.D.B.I. Bank. The application for refund of stamp duty was admittedly received by the authority on 18th November 2010. In support of this submission, learned counsel for the petitioner also invited my attention to various averments made in the affidavit-in-reply filed by the respondents and more particularly paragraph 5 admitting that the application for refund of stamp duty filed by the petitioner was received by the respondent no.3 on 18th November 2010 under Section 48(1) of the Maharashtra Stamps Act, 1958. He submits that the impugned order thus rejecting the application of the petitioner for refund of stamp duty on the ground that the application was not made within six months from the date of the purchase of stamps is ex facie perverse and is rendered on a wrong premise.

7. Ms.Solunke, learned AGP for the respondent nos.1 to 3, on the other hand, invited my attention to some of the averments made in the affidavit-in-reply. She laid emphasis on the issue of limitation. She submits that there was no date mentioned on the application made by the petitioner and thus the authority was justified in rejecting the application made by the petitioner for refund of stamp duty on the ground of limitation. She also made an attempt to support the impugned order by referring to the additional reasons recorded in the affidavit-in-reply and mainly that the petitioner had failed to prove the case that the transaction could not be materialized by and between the petitioner and Mr.Ashok C. Jain.

8. In so far as the issue of limitation raised by the respondents in the impugned order and also in the affidavit-in-reply is concerned, it

is an undisputed position that the Special Adhesive Stamps were purchased by the petitioner through franking of Rs.10,48,500/- on 20th May 2010 from I.D.B.I. Bank, Chembur, Mumbai. This fact was admitted in paragraph 3 of the affidavit-in-reply filed by the respondents. It is admitted in paragraph 5 of the affidavit-in-reply that the application for refund of stamp duty was made by the petitioner to the respondent no.3 on 18th November 2010 under Section 48(1) of the Maharashtra Stamps Act, 1958. It is thus admitted position that the application for refund of stamp duty was made within six months from the date of purchase of the Special Adhesive Stamps. The submission of the learned AGP that there was no date mentioned on the application made by the petitioner and thus the application was barred by law of limitation under Section 48(1) of the Maharashtra Stamps Act, 1958 is totally devoid of merit. The respondent had not disputed that the application was received by the authority on 18th November 2010 which was received within six months from the date of purchase of Special Adhesive Stamps. Even if the date was not mentioned on the application for refund of the stamp duty, the fact remains that the same was received on 18th November 2010 which was within six months from the date of purchase of Special Adhesive Stamps. In my view, there is thus no substance in the issue of limitation raised in the impugned order as well as in the affidavit-in-reply and the same is totally frivolous.

9. In so far as the additional reason recorded in the affidavit-in-reply that the petitioner had failed to prove the case that the transaction could not be materialized in by and between the petitioner and Mr.Ashok C. Jain for which the Special Adhesive Stamps was purchased by the petitioner is concerned, a perusal of the order passed

by the authority rejecting the application clearly indicates that the application for refund of stamp duty has not been rejected on that ground. In my view, the authority cannot be allowed to supplant the reasons in the affidavit-in-reply. In my view, the impugned order passed by the authority is totally contrary to Section 48(1) of the Maharashtra Stamps Act, 1958. The application made by the petitioner was ex facie made within six months from the date of purchase of Special Adhesive Stamps and the application thus was not barred by law of limitation prescribed under Section 48(1) of the Maharashtra Stamps Act, 1958. The impugned order is totally perverse and illegal and thus deserves to be set aside.

10. I therefore pass the following order :-

(i) Writ petition is allowed in terms of prayer clause (a).

(ii) The application for refund of stamp duty submitted by the petitioner on 18th November 2010 is allowed.

(iii) The respondents are directed to refund the amount after deducting the amount @ 10% as stated in the report, to the petitioner within two weeks from today.

(iv) Rule is made absolute in aforesaid terms.

(v) Parties to act on the authenticated copy of this order.

R.D. DHANUKA, J.