IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2018

CORAM :

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No. 17551 & 17552 of 2006
and M.P.Nos. 1 and 1 of 2006

Asiraya Information Technology Private Limited,
Rep.by its Director Mr.J.Francis
...Petitioner in both WPs

Versus

1.The District Registrar (Administation)
South Chennai
Chennai-600 015.

2.The Inspector General of Registration,
The Chief Controlling Revenue Authority,
120 Santhome High Road,
Chennai-600 028.
...Respondents in both WPs

COMMON PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records of the First Respondent in his proceedings No.3280/A1/05-2 dated 22.03.2006 and 27.03.2006 respectively and quash the same.

For Petitioner	:	M/s. Elizabeth Seshadri
For Respondents	:	Mr. T.M.Pappiah Special Government Pleader

COMMON ORDER

These Writ Petitions have been filed challenging the impugned order of the first respondent in his proceedings No.3280/A1/05-2 dated 22.03.2006 passed under Section 33A of the Stamp Act.

2 Since the parties and the issues involved in these writ petitions are same, these petitioners are taken up together for common disposal.

3 The case of the petitioner is that the State Government of Tamilnadu in order to develop a state of art Information Technology Park (ITP) and to make the State a preferred destination for Information Technology (IT) Companies to set up office and invest, has decided to encourage the promotion and development of certain lands as ITPs along the Old Mahabalipuram Road. As part of this, the State Government by way of G.O.Ms.No.27, Revenue 5(2) Dept. dated 14.01.1999 had transferred 8.01 acres of land in Kanagam Village, Mambalam, Guindy Circle, Chennai Disrict to M/s.TIDEL Park Ltd., a company registered under the Companies Act 1956 with a set up as a joint sector project with the participation of Tamilnadu Industrial Development Corporation (TIDCO) and Electronic Corporation of Tamilnadu (ELCOT). Therefore, the TIDEL Park had developed the ITP on 8.01 acres of land at No.4, Canal Bank Road, Taramani, Chennai 600 013 and they had become the absolute owners in possession and enjoyment of the land and the building situated therein.

4 It is the further case of the petitioner that the State Government in G.O.Ms.No.300 (Industries Department) dated 03.11.1997 had issued order for an exclusive Information Technology Policy for Tamil Nadu. As per that G.O., units in private ITP will be entitled for exemption from Stamp Duty and Registration charges at the time of allotment of sites/built up space as in the case of units in ELCOT and State Industrial Promotion Corporation of Tamil Nadu Ltd.,(SIPCOT) Industrial Estates. Thereafter, guidelines were issued for grant of Stamp Duty concession to units in private sector ITPs in a letter dated 18.02.2009. In furtherance to the above, the State of Tamil Nadu issued G.O.Ms.No.20 of Information Technology dated 21.06.1999, developers in private STP/ITPs for registering the property first on payment of stamp duty at the prescribed rates and then claim reimbursement from ELCOT.

5 It is the further case of the petitioner that, the State Government of Tamil Nadu issued another G.O.Ms.22 IT Department, dated 05.09.2000 for certain clarifications with regard to the procedure for grant of stamp duty concessions for units in the private sector ITPs and fixing the criteria. Again, the State Government of Tamil Nadu passed another G.O.No.169 Commercial Taxes(J) Department dated 13.10.2000 granting outright exemption from payment of stamp duty with regard to sale and lease of built up space by TIDEL Park Ltd., to entrepreneurs of Information Technology. Following G.O.Ms.No.161, two sale deeds were registered in favour of the petitioner dated 28.08.2002. Though, the sale deed was executed in the year 2002, after 4 years, the first respondent passed an impugned order dated 30.03.2005 demanding the petitioner an amount of Rs.17,62,205/- and Rs.25,10,000/- towards alleged

deficit stamp duty in respect of the sale deeds within 15 days on threat of initiation of proceedings under Section 33 A of the Stamp Act, which is invalid and against the issuance of G.O.Ms.161 dated 13.10.2000.

6 The learned counsel for the petitioner would submit that M/s.TIDEL Park Ltd., had registered two sale deeds in favour of the petitioner dated 28.08.2002. Though the sale was completed in the year 2002, after lapse of 4 years, the respondent passed an impugned order demanding the petitioner an amount of Rs.17,62,205/- and Rs.25,10,000/- under Section 33A of the Stamp Act, towards alleged deficit stamp duty on threat of initiating proceedings is unsustainable one. Even the impugned order was passed without following the provisions under Section 33 A of the Stamp Act. Section 33A of the Stamp Act imposes condition that if the respondent want to proceed under Section 33 A of the Act, they have to pass an order within a period of three years from the date of registration. In the present case, the respondent passed the impugned order after a lapse of three years and against the policy of the State Government in G.O.Ms.No.161 Commercial Taxes (J) Department dated 13.10.2000. Hence, she prayed for allowing the writ petition.

7 Per contra, the learned Special Government Pleader filed a counter, wherein he had fairly admitted that the sale deeds are registered on 28.08.2002 by TIDEL Park Ltd. in favour of one J.Asirvatham, Director, Asiraya Information Technology Private Limited for a sale consideration of Rs.1,49,01,250/- conveying 1111 sq.ft of UDS and land together with 4585 sq.ft of super built up area has been registered as document No.4077 of 2002 and other sale deed for Rs.2,12,18,730/- conveying 1581 sq.ft of UDS land together with 6529 sq.ft of super built-up area has been registered as document No.4078 of 2002 at District Registrar Office, Chennai South, respectively by allowing remission of stamp duty as ordered in G.O.Ms.No.161 dated 13.10.2000. However, based on the audit objection, the first respondent passed the impugned order stating that the transaction is made as per G.O.Ms.No.20 Information Technology Department, dated 29.06.1999 i.e., the plot area on which such facility is located must be minimum 2000 square meters. However, the petitioner purchased the land less than 2000 square meters. Accordingly, the petitioner is not entitled for any waiver of stamp duty as per G.O.Ms.No.20 dated 21.06.1999, since the same was noticed after registration proceedings under Section 33 A of the Stamp Act was initiated. Though the petitioner challenged the same in W.P.Nos.13529 and 13530 of 2005, the same was disposed of on 25.04.2005.

8 I have considered the rival submissions.

9 The issue involved in this case is whether the petitioner is entitled for the benefit of G.O.Ms.No.161 dated 13.10.2000 and the respondent can proceed the matter under Section 33 A of the Stamp Act after three years.

10 The undisputed facts involved in this case are, the petitioner's sale deeds are registered on 28.08.2002 and the present impugned proceedings were initiated in the year 2006, after a period of four years. Admittedly, the petitioner purchased the property from M/s.TIDEL Park, which was established specifically for the promotion and development of Information Technology. In order to promote the I.T.sectors, G.O.Ms.161,Commercial Taxes(J) Department dated 13.10.2010 was passed for exempting the payment of stamp duty and registration charges. However, G.O.Ms.20 and 22 of Information Technology was passed in the year 1999 and 2000 respectively, after considering the said G.Os., the present G.O.Ms.161 was passed. The stamp duty exemption given in the said G.O. is as follows:

> “3.The TIDEL Park Ltd., and TIDCO have stated that in the TIDEL Park, 10 lakhs square feet of built-up space is proposed to be allotted to Information Technology entrepreneurs in which 50% is to be sold and 50% is to be leased out and the rest of built-up space is proposed to be allotted for commercial facilities like banks, restaurants, health clubs, etc. and have requested to grant exemption from payment of stamp duty at the first point of sale and at every point of lease of built-up space by TIDEL to I.T. entrepreneurs and to follow the reimbursement procedure as ordered in G.O. sixth read above for the rest.
>
> 4.Based on the report of the Inspector General of Registration, the quantum of stamp duty involved in the proposal is worked out as Rs.24.38 crores for sale of 5 lakhs square feet of built-up space and Rs.1.51 crores for lease of 7 lakhs square feet of built-up space aggregating to Rs.25.89 crores.
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> 5.The Government after careful examination of the proposal, have decided to grant outright exemption from payment of stamp duty in respect of instruments of sale or lease of built-up space in favour of occupier information Technology companies by TIDEL Park Limited, treating it as a special case. This will be in continuation of the norms envisaged in the I.T.Policy and role of ELCOT in the G.Os. read above.”

11 A perusal of the above said G.O., makes it clear that the Government decided to grant outright exemption of stamp duty in respect of sale or lease of built-up space in favour of occupier Information Techonolgy companies by TIDEL Park Ltd, treating it as a special case. The said G.O. Was passed after

considering the G.O.Ms.20 and 22, which was passed in the year 1999 and 2000 respectively prior to G.O.Ms.No.161.

12 Hence, I have no hesitation to arrive at a conclusion that the impugned order was passed pursuant to G.O.Ms.161 dated 13.10.2000. Section 33 A of the Stamp Act itself, imposes a condition that if the authority decided to proceed the matter under Section 33A, they have to initiate the proceedings within three years from the date of registration. Hence, this Court is of the view that the authority has passed the impugned order with non-application of mind and without considering the G.O.Ms.161 dated 13.10.2000 and Section 33 A of the Stamp Act. Accordingly, these Writ Petitions are allowed and the impugned order of the first respondent in his proceedings No.3280/A1/05-2 dated 22.03.2006 and 27.03.2006 are set aside. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

rm

To

1.The District Registrar (Administation)
South Chennai
Chennai-600 015.

2.The Inspector General of Registration,
The Chief Controlling Revenue Authority,
120 Santhome High Road,
Chennai-600 028.

+2cc to Mr.KARTHIK SESHADRI, Advocate, S.R.No. 38504
+1cc to the Government Pleader, S.R.No. 39120

WP.Nos.17551 & 17552 of 2006

BS(CO)
TR(27/07/2018)