

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 6883 of 2016

Date of Decision: 15.03.2018

ASP SARIN REALITY PVT. LTD.

.....Petitioner

V/S.

STATE OF HARYANA & ORS.

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.

Present: Mr. Surjeet Bandhu and Mr. Veer Singh, Advocates,
the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

RAKESH KUMAR JAIN, J. (Oral)

The petitioner has prayed for the issuance of a writ in the nature of mandamus for seeking a direction to the respondents for refund of the excess stamp duty paid by him on the sale deeds executed and registered in the year 2013.

In brief, the petitioner purchased agricultural land situated in the revenue estate of village Nurpur Jharsa, Tehsil and District-Gurugram (earlier Gurgaon), Haryana during the period between July 2013 to August 2013. The petitioner got total 8 sale deeds registered with the office of the Sub Registrar, Gurugram. The land purchased by the petitioner was admittedly situated outside the municipal limits of District Gurugram.

According to the petitioner, the prevalent stamp duty, for the purpose of registration of the sale deeds of the agricultural land, situated outside the municipal limits of Gurugram, was 5% of the sale consideration. It is also submitted that as per the notification dated 11.03.2004, issued by the Urban Development Department, Haryana, the stamp duty for the purchase of

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land, falling within the municipal limits of Gurugram, was 2% extra. Meaning thereby, the land falling within the municipal limits, as per notification dated 11.03.2004, was to attract the stamp duty @7% of the sale consideration whereas the stamp duty on the land situated outside the municipal limits was 5% of the sale consideration. However, it is submitted that due to oversight, the petitioner had appended stamp duty @ 7% instead of 5% in respect of the 8 sale deeds which were registered during the period between July 2013 to August 2013. The petitioner has also averred that in order to establish the fact that the land purchased by him is outside the municipal limits of Gurugram in the year 2013, relied upon a notification dated 04.06.2015, as per which Village Nurpur Jharsa was included within the municipal limits of District Gurugram. Meaning thereby, at that time when all the 8 sale deeds in question were executed and registered in the year 2013, the land purchased by the petitioner was situated outside the municipal limits.

Realizing its mistake, the petitioner, later on, made a representation to the Deputy Commissioner, Gurugram dated 23.12.2013 for refund of the excess amount of stamp duty which comes to ₹ 1,35,46,195/-. Since, the said application was not considered, therefore, it was followed by a reminder dated 20.05.2015.

After notice, the respondents have filed their reply in which their only stand is that the petition has lost his remedy for recovery of excess stamp duty due to efflux of time in view of Section 45 of the Indian Stamp Act, 1899 (hereinafter referred to as the Act). According to the respondents, the recovery could have made by the petitioner of the excess amount of the

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stamp duty, in terms of Section 45 (2) of the Act, in which a period of three months has been prescribed and since the sale deeds were registered upto 30.08.2013 and the application was filed on 23.12.2013, therefore, the application was beyond limitation.

Learned counsel for the petitioner has submitted that the respondents have erred in applying the provisions of Sections 45 of the Act to the case of the petitioner because the said provision can be applied only if there is an order passed by the competent authority under Section 35 or 40 of the Act for the purpose of charging the stamp duty.

I have learned counsel for the parties and perused the available record.

There is no dispute in this case that the petitioner had paid the excess amount of stamp duty on the 8 sale deeds registered in the year 2013. It is also not in dispute that at the time when the agricultural land was purchased by the petitioner, it was situated outside the municipal limits of Gurugram as the area in which the land was purchased was included within the municipal limits in the year 2015. It is also not in dispute that at the time when the sale deeds were executed and registered, the prevalent rate of the stamp duty was 5% of the sale consideration for the land purchased outside the municipal limits of Gurugram and 7% of the sale consideration for the land purchased within the municipal limits. The petitioner has inadvertently paid 2% more stamp duty on the advice given by his consultants. The petitioner, therefore, made an appropriate application to the competent authority for the purpose of refund as the amount of refund is more than

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₹1.00 Crore but the same has been declined by the respondents only on the technical issue of limitation relying upon Section 45 (2) of the Act.

Since, the case of the respondents hinges upon the Section 45 of the Act, therefore, it would be relevant to refer to the same, which read as under: -

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.

The bare perusal of the aforesaid provision of the Act would reveal that it relates to orders, having been passed either Section 35 or Section 40 of the Act. It would be, thus, appropriate to refer to Section 35 and 40 also, which read as under: -

35. *Instruments not duly stamped inadmissible in evidence, etc.*

No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

***PROVIDED* that-**

(a) any such instrument not being an instrument chargeable³³ [with a duty not exceeding ten naye paise] only, or a bill of exchange or

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promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;

(e) nothing herein contained shall prevent the admission of any instrument in any court when such instrument has been executed by or on behalf of the government or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act

40. Collector's power to stamp instruments impounded

(1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under section 38; sub-section (2), not being an instrument chargeable⁴² [with a duty not exceeding ten naye paise] only or a bill of exchange or promissory note, he shall adopt the following procedure:

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(a) if he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of the five rupees; or, if he thinks fit,⁹[an amount not exceeding] ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:

PROVIDED *that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14; the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.*

(2) Every certificate under clause (a) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Collector under section 38, sub-section (2), the Collector shall, when he has dealt with it as provided by the section, return it to the impounding officer

In so far as Section 45 (1) is concerned, it relates to refund of penalty. Since, it is not the case of refund of penalty and rather it is the case of refund of excess amount paid in respect of the stamp duty, therefore, Section 45 (1) would not apply in the present case.

Section 45 (2) deals with the refund of excess stamp duty. The period of limitation provided in the said provision is of 3 months from the date of order charging the same.

Again, in Section 45 (2), there is a reference of Sections of 35 and 40 in regard to charging of the excess stamp duty. The word used by the

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legislature in Section 45 (2) is "order charging the same". Thus, the sine qua non for applying Section 45 (2) is the order, having been passed by the competent authority, charging the excess stamp duty. It would apply where an order is passed under Section 35 or 40 of the Act by the competent authority for charging the excess stamp duty from the purchaser of the property but it would not apply to a case where the purchaser of the property has inadvertently paid the extra stamp duty.

Thus, in my considered opinion Section 45 (2), providing 3 months limitation for the purpose of seeking recovery, would not apply to the case of the petitioner.

Since, the provision of Section 45 (2) is not applicable in the case of the petitioner, therefore, the net result would be the refund of the excess amount of stamp duty paid inadvertently by the petitioner to the respondents.

Thus, in view of the aforesaid facts and circumstances, the present petition is found to be meritorious and the same is hereby allowed and respondents are directed to refund the excess amount of stamp duty appended by the petitioner in all the 8 sale deeds, alongwith simple interest calculated @ 9% per annum, to be calculated from the date of deposit till the date of payment which has automatically accrued on the amount detained by the respondents, within a period of one month from the date of receipt of certified copy of this order.

March 15, 2018

Ess Kay

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No