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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 8781/2015 & CM No.19449/2015

IFCI LIMITED ..... Petitioner

Through: Mr.Dayan Krishnan, Sr.Advocate with Mr.Amish Tandon, Mr.M.S.Rao, Mr.Ayush Beotra and Mr.Sanjeevi Shashdri, Advocates

versus

THE COLLECTOR OF STAMPS (HQ) ..... Respondent

Through: Mr.J.M.Kalia, Advocate with Ms.Bhawana Garg, Advocate

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 12.01.2018

1. The petitioner - a listed public company - has filed the present petition impugning an order dated 22nd June, 2015 (hereafter 'the impugned order') by Collector of Stamps (the respondent), whereby he has opined that the petitioner would be liable to pay stamp duty aggregating Rs.1,72,20,524/- on the debentures issued by the petitioner.

2. Mr.Amish Tandon, learned counsel appearing for the petitioner pointed out that the impugned order had been passed pursuant to the petitioner's application under Section 31 of Indian Stamp Act, 1899 (hereafter 'the Act') seeking adjudication as to the proper stamp duty. However, the respondent has, in addition to giving his opinion as to the amount of stamp duty payable, also directed recovery of that amount and

further impounded the relevant documents.

3. According to the petitioner, it is entitled to pay stamp duty on a consolidated basis in terms of entry No.27 of Schedule I to the Act.

4. Mr Tandon relied on the decision of the Supreme Court in ***The Government of Uttar Pradesh & Ors. Vs. Raja Mohammad Amir Ahmad Khan***, **(1962) 1 SCR 97** and the decision of the Full Bench of the Kerala High Court in ***The Secretary to Government Vs. The Gwalior Rayon Silk Manufacturing Co.Ltd. & Anr.,*** **AIR 1973 Kerala 69** and on the strength of the said decisions, contended that the Collector of Stamps while exercising powers under Section 31 of the Act has no jurisdiction to impound any document or to initiate recovery proceedings. He contended that the said action can be initiated only in cases where the documents are produced before the officer, or it comes in the possession of the officer in discharge of his functions. He stated that this power is available in terms of Section 33 of the Act which falls under Chapter IV of the Act and no such action can be taken in proceedings under Section 31 of the Act.

5. The aforesaid contentions are merited. The Supreme Court in the case of ***Government of Uttar Pradesh & Ors. Vs. Raja Mohammad Amir Ahmad Khan*** (*supra*) had considered the aforesaid issue and observed as under:-

> "5. After an inordinately long delay, the Collector determined the amount of duty payable and impounded the document. Power to impound is given in Section 33 of the Act. Under that section any Person who is a Judge or is in-charge of a public office before whom an instrument chargeable with duty is produced or comes in the performance of his functions is required to impound the instrument if it appears to him not to be duly stamped. The question is does this power of

impounding arise in the present case? The instrument in dispute was not produced as a piece of evidence nor for its being acted upon, e.g., registration, nor for endorsement as under Section 32 of the Stamp Act but was merely brought before the Collector for seeking his advise as to what the proper duty would be. The words "every person............ before whom any instrument............ is produced or comes in the performance of his functions" refer firstly to production before judicial or other officers performing judicial functions as evidence of any fact to be proved and secondly refer to other officers who have to perform any function in regard to those instruments when they come before them, e.g., registration. They do not extend to the determination of the question as to what the duty payable is. They do not cover the acts which fall within the scope of Section 31, because that section is complete by itself and it ends by saying that the Collector shall determine the duty with which, in his judgment, the instrument is chargeable, if it is chargeable at all. Section 31 does not postulate anything further to be done by the Collector. It was conceded that if the instrument is unexecuted i.e. not signed, and the opinion of the Collector is sought, he has to give his opinion and return it with his opinion to the person seeking his opinion. The language in regard to executed and unstamped documents is no different and the powers and duties of the Collector in regard to those instruments are the same, that is, when he is asked to give his opinion, he has to determine the duty with which, in his judgment, the instrument is chargeable and there his duties and powers in regard to that matter end. Then follows Section 32. Under that section the Collector has to certify by endorsement on the instrument brought to him under Section 31 that full duty has been paid, if the instrument is duly stamped, or it is unstamped and the duty is made up, or it is not chargeable to duty. Under that section the endorsement can be made only if the instrument is presented within a month of its execution. But what happens when the instrument has been executed more than a month before its being brought before the Collector? Section 31 places no limitation in regard to the time and there is no reason why any time limit should be imposed in regard to seeking of opinion as to the duty payable.

6. Chapter IV of the Act which deals with instruments not duly stamped and which contains Sections 33 to 48, provides for impounding of documents, how the impounded documents are to be dealt with, Collector's powers to stamp instruments impounded and how the duties and penalties are to be recovered. It would be an extraordinary position if a person seeking the advice of the Collector and not wanting to rely upon an instrument as evidence of any fact to be proved nor wanting to do any further act in regard to the instrument so as to effectuate its operation should also be liable to the penalties which unstamped instruments used as above might involve. The scheme of the Act shows that where a person is simply seeking the opinion of the Collector as to the proper duty in regard to an instrument, he approaches him under Section 31. If it is properly stamped and the person executing the document wants to proceed with effectuating the document or using it for the purposes of evidence, he is to make up the duty and under Section 32 the Collector will then make an endorsement and the instrument will be treated as if it was duly stamped from the very beginning. But if he does not want to proceed any further than seeking the determination of the duty payable then no consequence will follow and an executed document is in the same position as an instrument which is unexecuted and unstamped and after the determination of the duty the Collector becomes functus officio and the provisions of Section 33 have no application. The provisions of that section are a subsequent stage when something more than mere asking of the opinion of the Collector is to be done.”

6. Mr Kalia, the learned counsel appearing for the respondent also does not dispute the aforesaid proposition. In view of the above, the impugned order to the extent it directs impounding of instruments or recovery of the amount of stamp duty as determined, is set aside.

7. Mr Kalia also readily states that the opinion as provided by the Collector of Stamps is not binding on either party.

8. In view of the above, this Court is not persuaded to examine the merits of the respondent’s opinion as to the stamp duty payable on the debentures issued by the petitioner.

9. The controversy involved in the present case is, essentially, whether the petitioner is entitled to pay a consolidated duty on the issuance of Non Convertible Debentures (NCDs) of the aggregate value Rs.1,972.26 crores. The said NCDs of varying options were issued in two tranches. The petitioner claims that as per past practice, the consolidated duty is computed for each tranche separately and, therefore, the petitioner has deposited the maximum consolidated duty of Rs. 25 lakhs for each tranche. However, according to the respondent each option available must be considered as a separate series and the consolidated duty is to be determined for NCD’s of each option separately. The petitioner claims that although the NCDs have been issued with multiple options, they are essentially the same instruments for raising funds for the company. Mere minor changes in interest rates or terms of the NCDs would not alter the character of the instruments as such.

10. The petitioner has also referred to the provisions of Section 9(1)(b) of the Act which enable payment of levy of consolidated duty in certain cases. It is seen that the opening sentence of Section 9(1) indicates that for any of the clauses under Section 9(1) to be applicable, it is necessary that a Rule or an Order be published in the official gazette.

11. Mr Kalia has produced certain files in respect of similar cases, which indicate the procedure adopted by the respondent in cases under section 9(1)(b). The respondent seems to follow a practice of accepting applications

from entities seeking to avail of the benefit of consolidated duty and then passing appropriate orders under Section 9(1)(b) of the Act, which are also gazetted.

12. In this view, Mr.Dayan Krishnan, learned senior counsel appearing for the petitioner seeks liberty to approach the respondent by way of an application under Section 9(1)(b) of the Act while reserving all rights and contentions of the petitioner.

13. In view of the above, liberty is granted to the petitioner to file an appropriate application under Section 9(1)(b).

14. The petition and the pending application are disposed of in the aforesaid terms.

15. It is clarified that all rights and contentions of the parties are reserved.

VIBHU BAKHRU, J.

JANUARY 12, 2018

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