IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1009 OF 2011

M/s Mohit Diamonds Pvt. Ltd. … Petitioner
Versus
State of Maharashtra
And Others … Respondents

..

Mr. Rohaan Cama a/w Mr. Aditya Ueshi and Mr. Netaji Gawde I/b Mr. Sanjay Ueshi & Co. for the Petitioner.
Mr. Hemant Haryan, AGP for Respondent Nos.1 and 2.
Mr. Prasad M. Gurnule, Supervisor, Office of the Collector of Stamps, Andheri, present in-person.

…..

CORAM : S.C. GUPTE, J.

DATE : 5 APRIL 2019

P. C. :

. This petition challenges an order passed by the Collector of Stamps adjudicating the documents of the Petitioner under Section 31 of the Bombay Stamp Act, 1958 (now Maharashtra Stamp Act) (hereinafter called "Stamp Act") and the appellate order passed by the Chief Controlling Revenue Authority, Maharashtra State, Pune, under Section 53(1A) of the Stamp Act confirming that order.

2 The Petitioner's case is that it is an industrial unit situated in a Special Economic Zone, certified by the Development Commissioner (Industries), Mumbai or other officer authorised by him in this behalf as a "Unit in the Special Economic Zone". It is submitted that Government of Maharashtra, by its order dated 20 May 2002, passed in exercise of powers

conferred on it by Clause (a) of Section 9 of the Stamp Act, remitted the stamp duty chargeable *inter alia* under Article 36 ('lease') in Schedule I appended to the Stamp Act on instruments executed by any person for starting an industrial unit or units or their expansion in the area of Special Economic Zone established by the Government in pursuance of the policy framed under the Government Resolution of 12 October 2001. This remission was applicable to the documents executed between 20 May 2002 and 31 March 2006. The Petitioner's case is that it obtained premises on sub-lease from SEEPZ SEZ Administration in respect of a Unit allotted to it in SEEPZ ++Towers. It is submitted that a copy of the sub-lease agreement executed with SEEPZ SEZ Administration in this behalf was received by the Petitioner from the Office of the Development Commissioner of SEEPZ Special Economic Zone, Mumbai on 18 March 2006. On 20 March 2006, whereafter the Petitioner applied to the Asstt. Development Commissioner of SEEPZ SEZ for his certificate for exemption of stamp duty and registration fees in accordance with the Government order referred to above. It is submitted that the certificate was issued to the Petitioner on 24 March 2006, whereafter the document of sub-lease executed between the Petitioner and SEEPZ SEZ Administration was submitted to the General Stamp Office for adjudication on 28 March 2006. It is the grievance of the Petitioner that the impugned adjudication order, which came as late as on 29 May 2007, did not extend the benefit of the remission order referred to above to it on the ground that that the instrument could not be accorded any benefit of remission under the Government order dated 20 May 2002, since it was neither certified (i.e. adjudicated on a date prior to 31 March 2006) nor executed when it was submitted to adjudication under Section 31 of the Stamp Act. The Collector of Stamps made a demand of stamp duty of Rs.41,21,525. This amount has been paid under protest by the Petitioner, whereupon the document has already been registered by the authority. The Petitioner then proceeded to challenge the adjudication order passed by the Collector before the Chief Controlling Revenue Authority, Maharashtra State, Pune in an appeal under Section 53(1A) of the Stamp Act. The Chief Controlling Authority, by its impugned order dated 10 March 2010, dismissed the appeal *inter alia* on the ground that the instrument in the Petitioner's case was not executed before 31 March 2006. The order of adjudication passed under Section 31 of the Stamp Act and the appellate order under Section 53(1A) of the Stamp Act are subject matter of appeal in the present petition.

3 Mr. Cama, learned Counsel for the Petitioner, submits that several industrial units similarly placed as the Petitioner were granted remission of duty, though their documents were not executed prior to 31 March 2006. Learned Counsel, however, accepts that in all these cases, the certification (i.e. adjudication) by the authority under Section 31 of the Stamp Act was as of a date prior to 31 March 2006. Learned Counsel submits that from the documents made available by the Stamp Authorities to the Petitioner under the R.T.I. Act, it transpires that some of these documents were submitted for adjudication to the Stamp Authority after the Petitioner submitted its document. Learned Counsel submits that whereas these other documents were granted benefit of remission by the Respondents on the basis of their certification on or before 31 March 2006 under Section 31 of the Act, the Petitioner's appeal was rejected by the Chief Controlling Authority on the ground that its document was not executed on or before 31 March 2006. Learned Counsel submits that for no fault of the

Petitioner, though the Petitioner had filed its document for adjudication prior to 31 March 2006, the authorities could not certify it under Section 31 on or before 31 March 2006. Learned Counsel submits that, in the premises, the Petitioner ought not to be denied benefit of remission under the Government order of 20 May 2002. Alternatively, learned Counsel submits that the date '31 March 2006' referred to in the remission order of 20 May 2002 should be construed as the date of submission of the document for adjudication under Section 31 of the Stamp Act.

4 None of the two contentions of learned Counsel is tenable. No taxing statute or notification can be construed, when its meaning is plain and simple, on considerations of hardship or misfortune of the assessee. The order dated 20 May 2002 does not admit of any interpretational aid in this behalf. It remits, in plain and simple words, stamp duty chargeable under Article 36, in case of an instrument executed by a person stated therein between 20 May 2002 and 31 March 2006. The Petitioner's document was admittedly not executed till 31 March 2006. That some other documents, submitted by similarly placed persons, were extended the benefit of remission only on the basis of their adjudication by the stamp authorities on or before 31 March 2006, cannot be urged by the Petitioner as a ground in its support. The adjudication, in some of these cases, in the first place, might well have been post-execution. But even if the execution in some of these cases was after 31 March 2006, the most that can be said is that the benefit of remission of stamp duty was wrongly extended to these documents. That is, however, no ground to extend similar benefit to the document in the present case. In any event, it is submitted by learned AGP for Respondent Nos.1 and 2, after taking

instructions, that remission granted in case of these other documents is a subject matter of an enquiry by an independent authority. Be that as it may, as I have noted above, any benefit of a taxing statute or order thereunder unauthorizedly extended to some party, cannot be a ground to any other assessee to claim a similar benefit.

5 Secondly, and in any event, it is not the Petitioner's case that its document was certified under Section 31 of the Stamp Act on or before 31 March 2006. The Petitioner's case is that for no fault of it, it is denied remission of stamp duty inasmuch as the Petitioner had submitted its document for adjudication prior to 31 March 2006 and had no control over its certification by the stamp authorities on or before any particular date. Even this case has no substance. Firstly, it is not that the document was submitted by the Petitioner so much in advance that any failure on the part of the stamp authorities in certifying it under Section 31 before the stipulated date would have to be termed as a breach of statutory duty on their part. The Petitioner submitted its document for adjudication on 28 March 2006, i.e. just a couple of days prior to the last date for execution. The stamp authorities could not be said to have failed in their statutory duty of adjudicating the document within a reasonable time, if they did not do so by 31 March 2006. That they did so in some other cases is no justification in support of the Petitioner's case. Besides, the Petitioner could well have got the document executed before submitting it for adjudication so as to meet the deadline of 31 March 2006. The parties have an option either to have the document executed first and then submitted to adjudication or vice versa. The Petitioner chose the second option; it submitted the document first for adjudication. In other words, it

took the risk of missing out on the last date of execution for claiming remission of stamp duty.

6 Learned Counsel submits that for the purpose of remission of stamp duty under the order dated 20 May 2002, the crucial date of 31 March 2006 should be treated not as the date of execution of instruments referred to therein but of submission of unexecuted instruments for adjudication under Section 31 of the Stamp Act. The order of 20 May 2002 is not capable of being read in the manner suggested by learned Counsel for the Petitioner. In its plain terms, it is not capable of such construction. Quite apart from that, Section 31 of the Stamp Act, as noted above, provides for adjudication of stamp duty for both executed and unexecuted instruments. Even if one were to presume that wherever a document is required to be adjudicated, its submission for adjudication under Section 31 of the Stamp Act should be the relevant date for considering remission of stamp duty, there is no reason why such adjudication could be of an unexecuted document, since Section 31, as noticed above, at any rate, applies to both executed and unexecuted documents.

6 The Controlling Authority, in the premises, cannot be said to have erred in law, whilst rejecting the Petitioner's appeal on the ground that in its case the instrument was not executed on or before 31 March 2006. The order of 20 May 2002, under which remission of stamp duty is claimed, is plain and simple. It gives remission only to those documents, which are executed prior to 31 March 2006.

7 Accordingly, there is no merit in the writ petition. The petition is dismissed. No order as to costs.

(S.C. GUPTE, J.)