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

\+ LPA 188/2019 & CM APPLs. 12574/2019, 12575/2019 & 12576/2019

GOVT OF NCT OF DELHI & ANR ..... Appellants

Through: Mr. Ramesh Singh, SC, GNCTD with Mr. Ankur Chhibber, Mr. Chirayu Jain & Ms. Nikita Goyal, Advs. for GNCTD.

Versus

DR POORNIMA ADVANI & ANR ..... Respondents

Through: Mr. Abhishek Puri with Mr. Yasharth Misra, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

O R D E R

% **18.03.2019**

CM APPL. 12576/2019 *(exemption)*

Allowed, subject to just exceptions.

CM APPL. 12575/2019 *(delay in filing)*

For the reasons stated in the application, delay in filing the appeal is condoned and the application is disposed of.

LPA 188/2019 & CM APPL. 12574/2019 *(stay)*

1. Seeking exception to an order passed by the learned writ court on 20.08.2018 in W.P.(C) 9014/2017, this appeal has been filed under Clause 10 of the Letters Patent.

2. Facts in brief which are necessary for deciding the issue in question indicates that the petitioners in the original writ petition, namely, respondents herein, Dr. Poornima Advani and Dr. Shailesh K. Hathi

purchased e-stamp papers bearing no.IN-DL67287494587124O on 06.07.2016 for the purpose of execution of an instrument purportedly for transfer of property. It seems that the e-stamp papers indicated (vide endorsement) that it was for purchase of property, it mentioned the particulars of the property proposed to be purchased, the amount paid for purchase of the e-stamp papers, i.e. stamp duty valued at ₹28,10,000/- paid through the joint bank account of the respondents herein and various other details were endorsed in the stamp paper. The respondents are said to have given the stamp paper to the broker for execution of an instrument but it seems that the broker misplaced/lost the stamp paper. Accordingly, a complaint was lodged with the Criminal Branch, Delhi Police on 04.08.2016 itself when the loss was detected. On 06.08.2016, a public notice was issued in various English and Hindi newspapers and as the respondents were desirous of taking the same transactions with regard to the property forward, they purchased fresh stamp papers on 06.08.2016 bearing No.IN-DL80459288277224O and consequently, the sale deed was executed on 08.08.2016. Thereafter on 11.08.2016, the respondents filed an application with the Sub-Divisional Magistrate, Collector of Stamps for refund of stamp duty amounting to ₹28,10,000/- on account of loss of the earlier e-stamp papers purchased on 06.07.2016. This request was rejected vide order passed on 21.10.2018 issued by the Collector of Stamps (HQ). Challenging this order, the writ petition was filed. The writ petition having been allowed, this appeal before us by the Government.

3. It was the contention of Sh. Ramesh Singh, the learned standing counsel representing the appellant/Govt. of NCT of Delhi that since there are no powers vested with the Government under the Stamp Act to refund

stamp duty on account of loss of stamp paper, refund of stamp duty should not have been directed. Learned counsel took us through Chapter-V of the Stamp Act and read the provisions from Section 49 to 54 and vehemently argued that refund of stamp duty can be permitted only with regard to the eventualities contemplated in Chapter-V and as there is no provision for refund of stamp duty in case where the stamp paper is lost, there is no question of refund of the stamp duty paid. It was argued by him that the Stamp Act is a fiscal statute and, therefore, refund cannot be permitted contrary to the statutory provisions as a fiscal provision requires strict implementation and compliance.

4. However, the learned writ Court has and this Court can also take notice of the fact that it is not the case of the respondents that the stamp paper has been misused or illegally dealt with. The learned writ court after taking note of various submissions that were made, particularly, the statutory provisions with regard to refund and in Paras 19, 20 and 21 formulated the issues in the following manner:-

> *"19. Therefore, the question before me is: should the Court, in such circumstances, fold its hands and deny a person, who has lost the stamp paper, relief only because the draftsman has omitted the use of such expression explicitly in the Statute. As noticed above, it is not unknown to law that when Courts have encountered such creases in the Statute they have proceeded to iron them out without destroying the fabric which forms the core of the Statute. The expression "obliterate" appearing in Section 49(a) of the Act should, in my opinion, include cases where the Stamp paper is lost by an applicant seeking refund of stamp duty. This would be a 'reasonable' and 'practical' interpretation of Section 49(a) of the Act, as any other interpretation could lead to a situation where it may fall foul of Article 14 of the Constitution.*
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> *20. There is another way of looking at the matter, which is, the scheme of Chapter V of the Act. If the scheme, as discussed above, is*

kept in mind, respondents ought to refund stamp duty even in cases where an applicant claims refund of stamp duty on account of loss of e-stamp paper; subject to an enquiry establishing factum of loss and adequate safeguards being put in. To my mind, if the contrary view was sustained, it would result in the State retaining money without the authority of law, as admittedly, the taxing event had not occurred in the facts and circumstances of this case.

21. In the instant case, the petitioners have provided a photocopy of e-stamp paper dated 6.7.2016, which at the moment, is the best secondary evidence available with it, which, shows that the e-stamp paper was not engrossed."

5. The learned writ court thereafter held that the contentions of the Government that the duty paid was in the nature of tax which cannot be refunded is not correct because the event for payment of tax or duty has not arisen in the instant case. It would only arise when the instrument is executed. Thereafter, taking note of various judgments, particularly, the judgment heavily relied upon by Sh. Ramesh Singh, i.e., *Mafatlal Industries Ltd. & Ors. v. Union of India & Ors.,* (1997) 5 SCC 536, the learned writ Court has come to the conclusion that by providing a photocopy of the e-stamp paper purchased on 06.07.2016, the best available secondary evidence has been furnished, the e-stamp paper was not engrossed, it was never used and in Para 22 recorded the following conclusion:-

"22. Therefore, in my view, the continued retention of amount paid towards anticipated stamp duty in the hands of the respondents is illegal. The apprehension expressed by the respondents that there was a possibility of the lost e-stamp paper being mis-utilized seems to be tenuous for the following reasons:

(i) First, the particulars of the transaction, parties and the consideration have already been incorporated in the lost e-stamp paper.

(ii) Second, with the technological innovation in place, the said information would be available and anyone trying to use

the lost e-stamp paper can easily be found out. In any event, the fact the lost e-stamp paper dated 06.07.2016 adverts to the same property qua which sale transaction stands effected via the new stamp paper dated 06.08.2016, the possibility of misuse of the old e-stamp paper dated 06.07.2016, to my mind, does not arise.

(iii) The lost e-stamp paper dated 06.07.2016 having been locked and cancelled, there is, to my mind, given the technology in place, no possibility of the lost e-stamp paper being mis-utilized. The Collector of Stamps invariably checks the website of Stock Holding Corporation Ltd. to ascertain whether or not the stamp paper is genuine. The order dated 11.03.2015, passed by the Divisional Commissioner, clearly casts such an obligation on the Collector of Stamps.

(iv) Lastly, in any case, the petitioners have furnished an indemnity bond, and therefore, loss or damages, if any, suffered by the respondents can always be recovered."

6. Finally, taking note of the totality of the circumstances, the learned writ court has come to the conclusion that in the facts and circumstances of the present case, the Collector of Stamps, a creation of statute has to operate in a pragmatic and justice oriented manner. There being no prohibition in the Act for grant of refund for lost e-stamp paper, the Collector of Stamps should not collect or retain the duty which lawfully does not belong to the Exchequer. Taking note of all these circumstances and applying the principles of law in detail with reference to various judgments cited, the learned writ Court directed for refund.

7. A detailed order passed by the learned writ court, in our considered view, cannot be interfered with. Merely because the statute does not provide for refund, it cannot be said that refund cannot be permitted particularly when we cannot lose sight of the fact that the legislature may not have

conceived of all situation that may arise or a given set of circumstances which may warrant action to be taken in a particular manner, may be refund of duty paid. Once there was material to show that the claim of the petitioner with regard to loss of the e-stamp paper was genuine, it was not a malafide action. It was a bonafide act and if in the absence of any statutory provision for refund, the learned writ court interpreted the statutory provisions in a manner to bestow justice to an aggrieved person after recording elaborate reasons for doing so, particularly after discussing the law and precedents with regard to refund of taxes and duties, we see no reason to make any indulgence into the matter. A reasonable approach adopted by the learned writ court, in the facts and circumstances of the present case, does not call for any interference.

8. The appeal is, accordingly, dismissed along with the pending application. However, the refund may now be granted, if not already done, within a period of four weeks from today.

CHIEF JUSTICE

ANUP JAIRAM BHAMBHANI, J

MARCH 18, 2019/kks