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

\+ **W.P.(C) 2872/2019 & CM APPL. 13335/2019**

UNION BANK OF INDIA ..... Petitioner

Through Mr Gautam Gupta, Advocate.

versus

COLLECTOR OF STAMPS / SDM & ANR ..... Respondents

Through Mr Sanjoy Ghose, ASC, GNCTD with Ms Urvi Mohan, Advocates for GNCTD.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **05.04.2019**

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 05.03.2019 passed by respondent no.1 (the Collector of Stamps) directing the petitioner to pay a sum of ₹3,24,161/- and a penalty equivalent to three times the aforesaid amount (determined at ₹9,72,483/-). Although, the petitioner has filed an appeal under Section 56 of the Indian Stamp Act, 1899 (hereafter 'the Act'), the said appeal has not been taken up by the Appellate Authority as the powers to adjudicate the same have not been delegated to the concerned officer as yet. In the aforesaid circumstances, the petitioner has been constrained to file the present petition.

2. The petitioner had taken possession of a property bearing No. 14,15 Block F in Connaught Place, New Delhi from respondent no.2 in the year 1965.

3. On 01.10.2009, the petitioner bank entered into a lease in respect of the said property for a period of nine years commencing from 01.01.2009. The said period expired on 31.12.2018. The petitioner and respondent no.2 were desirous of renewing the said lease and, accordingly, entered into a fresh lease deed dated 07.02.2019 for a period of 15 years.

4. The petitioner paid a stamp duty of ₹18,06,675/- on the aforesaid lease deed and produced the same before the Registering Authority on 28.01.2019.

5. The petitioner received a show cause notice dated 19.02.2019 from the Collector of Stamps alleging that the stamp duty paid on the lease deed was deficient. The controversy regarding the calculation of stamp duty stems from not including the Goods and Services Tax (GST) payable on the lease rental as a part of the lease rental. Concededly, if the GST payable on the lease rentals is included for the purposes of calculation of the stamp duty, the stamp duty computed by the petitioner is deficient to the extent of ₹3,24,161/-.

6. The petitioner has assailed the impugned order on the ground that it was not aware that GST was to be included as a part of the lease rental for the purposes of the calculation of the stamp duty, and the facts of the case do not warrant imposition of penalty as there was no

intention on the part of the petitioner to evade any stamp duty.

7. The learned counsel appearing for the petitioner readily accepts that the GST on lease rental is required to be included for calculation of the stamp duty. He also states that the petitioner is ready and willing to pay the deficient stamp duty. In view of the above, the only question that is required to be addressed is with regard to the levy of penalty of ₹9,72,483/-.

8. Mr Sanjoy Ghose, learned counsel appearing for respondent no.1 submitted that the petitioner is a bank and, therefore, ought to have correctly computed the stamp duty. He further submits that since the petitioner has already preferred an appeal, the petitioner ought to be relegated to the said remedy for determination of the question whether the levy of penalty was warranted in the facts of the present case. He also states that in terms of Section 45 of the Act, the petitioner is required to pay the full penalty and the same can be refunded to the petitioner only if the petitioner succeeds before the Appellate Authority.

9. Insofar as the contention that the petitioner should be relegated to the Appellate Authority, this Court is not persuaded to accept the same. This is so for the reason that the concerned officer has not been authorised to decide the appeal and therefore, the petitioner does not have any alternate remedy at this point of time.

10. GST has been recently introduced and although the petitioner has now accepted that GST was required to be included in the lease

rental for the purposes of calculation of the stamp duty, it cannot be disputed that there has been some confusion regarding the said levy. In this view, the petitioner's contention that it had calculated the stamp duty under the *bonafide* belief that the same was only payable on the lease rental and not on the GST, cannot be doubted. It is also relevant to note that the petitioner had already paid a stamp duty of ₹18,06,675/- computed on the lease rental actually payable to the lessor.

11. Having stated the above, it is also trite that ignorance of law is no excuse.

12. Considering the above, this Court is of the view that levy of three times the amount of duty is not commensurate with the facts of the case. It would serve the ends of justice if the penalty is reduced to an amount equal to the deficient stamp duty.

13. In view of the above, the petitioner is directed to deposit the deficient stamp duty of ₹3,24,161/- along with a penalty of an equivalent amount within a period of one week from today.

14. The petition is disposed of in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

APRIL 05, 2019
pkv