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

\+ W.P.(C) 7416/2019

CITIUS REAL ESTATE (P) LIMITED ..... Petitioner

Through: Mr Parvinder Chauhan and Mr Nitin Jain, Advocates.

versus

COLLECTOR OF STAMPS/SDM (HQ) ..... Respondent

Through: Mr Gautam Narayan, ASC, GNCTD with Ms Shivani Vij, Advocate for GNCTD.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 12.07.2019

CM No.30902/2019

1. Allowed, subject to all just exceptions.

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2. The petitioner has filed the present petition, *inter alia*, impugning an order dated 20.02.2019, whereby the petitioner's request for refund of stamp duty has been rejected on the ground that it was beyond the stipulated period of six months from the date of purchase of the stamp paper.

3. The petitioner had filed a writ petition seeking similar relief, which was disposed of by this Court by an order dated 07.12.2018 in view of the *prima facie* opinion that the issue was covered by the decision of the Coordinate Bench of this Court in ***Dr Purnima Advani & Anr. v. Government of NCT of Delhi & Anr.: W.P.(C) 9014/2017 decided on***

28.08.2018. In this view, the respondent was directed to consider the petitioner's application fresh having regard to the decision of this Court in ***Dr Purnima Advani's*** case (*supra*).

4. Mr Gautam Narayan, learned counsel appearing for the respondent submits that ***Dr Purnima Advani's*** case (*supra*) related to stamp paper that had been lost and an application had been moved within the period of limitation. He submits that the said issue does not arise in this case. He has also referred to Section 54 of the Indian Stamp Act, 1899 and submits that the petitioner's application runs contrary to the express provision of the said Act.

5. Mr Chauhan, learned counsel appearing for the petitioner states that the decision of this Court in ***Dr Purnima Advani's case*** *(supra)* rests on the principle that the State cannot appropriate tax if the taxing event has not occurred. He states that in the case of stamp duty, the taxing event is an execution of the instrument, which has to be stamped. In cases where instrument is not executed, the State would not have the power to recover tax.

6. Although the arguments advanced by Mr Chauhan are persuasive; it is undeniable that entertaining an application that has been filed beyond the period of six months from the date on which the stamp paper was purchased would run contrary to the express provisions of Section 54 of the Indian Stamp Act, 1899. And, there is no challenge to the said provision.

7. In view of the above, Mr Chauhan, seeks to withdraw the present petition with liberty to file afresh, challenging Section 54 of the Indian

Stamp Act, 1899.

8. The petition is dismissed as withdrawn with the aforesaid liberty.

VIBHU BAKHRU, J

JULY 12, 2019
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