

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

% **Date of decision: 17<sup>th</sup> January, 2019**

+ **O. REF. No.2/2016**

**In Re: CHIEF CONTROLLING REVENUE AUTHORITY .... Petitioner**

Through: Mr. J.M. Kalia, Advs. for the  
petitioner.

Mr. Rajeev K. Virmani, Sr. Adv.  
(Amicus Curiae).

**CORAM:-**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**HON'BLE MR. JUSTICE JAYANT NATH**

**RAJIV SAHAI ENDLAW, J.**

1. The Chief Controlling Revenue Authority (CCRA), Government of National Capital Territory of Delhi (GNCTD) has made this Reference under Section 57 of the Stamp Act, 1899 seeking a decision on the following issue:

*“Whether the notification no.13 of 25-12-1937 extending benefit of remission in stamp duty in case of subsidiary companies as applicable in the then province of Delhi has any continuous validity and applicability in view of notification no. GSR 894 dated 30-09-1958 by which the central government extended the Indian Stamp (Punjab Amendment) Act, 1958 replacing the previous and then prevalent stamp law in union territory of Delhi w.e.f. 01-10-1958.”*

2. In accordance with Section 57(2) of the Act providing for decision of such Reference by not less than three Judges of the High Court, the Reference was listed before this Bench.

3. The case stated in the Reference Petition is as under:

- (i) The Delhi Laws Act, 1912 proclaiming certain parts, formerly included within the province of Punjab, to be known as province of Delhi, vide Section 7 thereof empowered extension of enactments in force in other provinces with modifications and restrictions, to Delhi.
- (ii) Vide Notification dated 16<sup>th</sup> January, 1937, issued in exercise of powers under clause (a) of Section 9 of the Stamp Act remission was granted in respect of the stamp duty chargeable under Articles 23 (Conveyance) and 62 (Transfer) of Schedule-I of the Stamp Act on the instruments evidencing transfer of property between companies limited by shares, if 90% of the issued share capital of the transferee company was in the beneficial ownership of the transferor company or where transfer took place between a parent company holding 90% and a subsidiary company or where the transfer was between two 90% subsidiary companies.
- (iii) Vide Notification dated 25<sup>th</sup> December, 1937, also issued in exercise of powers under Section 9(a) of the Stamp Act, remission was granted in respect of duty chargeable in the province of Delhi on instruments evidencing transfer of properties between companies limited by shares where, 90% of the issued share capital of the transferee company was in the beneficial ownership of the transferor company or where transfer took place between a parent company holding 90% and a

subsidiary company or where the transfer was between two 90% subsidiary companies.

- (iv) On 16<sup>th</sup> April, 1950 Union Territories (Laws) Act, 1950 came into force with the object to empower Central Government to extend to the Part-C States any enactment in force in any Part-A State or any other Part-C State; when the Constitution came into force, Delhi was a Part-C State.
- (v) By Constitution 7<sup>th</sup> Amendment of 1<sup>st</sup> October, 1956, Part-C States were replaced by the Union Territories, thereby constituting the province of Delhi as a Union Territory.
- (vi) In exercise of powers conferred by Section 2 of the Union Territories (Laws) Act, 1950, vide notification dated 30<sup>th</sup> September, 1958 the Stamp (Punjab Amendment) Act was extended to Delhi w.e.f. 1<sup>st</sup> October, 1958, repealing the previous stamp law in force in Delhi and substituting the same by the Stamp (Punjab Amendment) Act, 1958 as then in force in Punjab except Schedule-1A of the Punjab State inasmuch as separate Schedule-1A was created for the Union Territory of Delhi.
- (vii) With the repeal of the previous stamp law applicable in the Union Territory of Delhi before 1<sup>st</sup> October, 1958, all notifications issued thereunder also stood repealed by implication; there was thus no occasion w.e.f. 1<sup>st</sup> October, 1958 to continue to extend remission of stamp duty to the instrument of transfer between the principal and subsidiary companies

holding 90% or above stake in terms of Notification dated 25<sup>th</sup> December, 1937.

(viii) A single Judge of this Court, in *Delhi Towers Limited Vs. GNCT of Delhi* (2009) 165 DLT 418 held that in accordance with Article 372 of the Constitution of India, Notification dated 16<sup>th</sup> January, 1937 would be a law in force as on the date of the constitution coming into force and it had not been superseded by said law; it was further held that the Notification dated 25<sup>th</sup> December 1937 was applicable and binding; consequently it was held that subject to the conditions in Notification dated 25<sup>th</sup> December, 1937 being satisfied, the stamp duty chargeable on the approved scheme of amalgamation would stand remitted in terms thereof.

(ix) The Govt. of NCT of Delhi, vide Notification dated 1<sup>st</sup> June, 2011, withdrew the Notification dated 16<sup>th</sup> January, 1937.

4. The petitioner CCRA, in compliance of Section 57(1) of the Act requiring it to along with the Reference forward its own opinion, has opined:

- (i) the Notification dated 25<sup>th</sup> December, 1937 remitting the stamp duty stood repealed on extension to Delhi of the Stamp (Punjab Amendment) Act, 1958;
- (ii) thus, w.e.f. 1<sup>st</sup> October, 1958, stamp duty in Delhi is chargeable in accordance with Schedule-1A as applicable to Delhi and exemptions contained therein only;

- (iii) the Stamp (Punjab Amendment) Act, 1958 had no provision of exemption in the nature of Notification dated 25<sup>th</sup> December, 1937, as was earlier applicable in the Union Territory of Delhi;
- (iv) the existing Article 23 of Schedule-1A, which deals with 'conveyance', is applicable to transfer of properties *inter se* companies, by amalgamation/merger;
- (v) the dicta of the Single Judge of this Court in ***Delhi Towers Limited*** supra is *per incuriam* inasmuch as the attention of the Court was not drawn to the legal status of Delhi and the Notification dated 30<sup>th</sup> September, 1958 extending the Stamp (Punjab Amendment) Act to Delhi with effect from 1<sup>st</sup> October, 1958; and,
- (vi) that all exemptions under a fiscal statute have to be construed strictly, against the assessee and in favour of the revenue.

5. It is further pleaded in the Reference Petition that there is a doubt as to the amount of stamp duty chargeable/payable respecting the scheme of amalgamation/merger of the nature of Section 391/392 of the Companies Act, 1956 between two companies in which at least 90% of the issued share capital of the transferee company is in the beneficial ownership of the transferor company or the transfer is from a parent company who is the beneficial owner of not less than 90% of the issued share capital of the subsidiary company to the subsidiary company or is between two 90% subsidiary companies.

6. Chapter VI titled 'Reference and Revision' of the Stamp Act, in Sections 56 to 59 thereof provides as under:-

**“56. Control of, and statement of case to, Chief Controlling Revenue-Authority.** — (1) The power exercisable by a Collector under Chapter IV and Chapter V [and under clause (a) of the first proviso to section 26] shall in all cases be subject to the control of the Chief Controlling Revenue-Authority.

(2) If any Collector, acting under section 31, section 40 or section 41, feels doubts as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue-authority.

(3) Such authority shall consider the case and send a copy of its decision to the Collector who shall proceed to assess and charge the duty (if any) in conformity with such decision.

**57. Statement of case by Chief Controlling Revenue-Authority to High Court.** — (1) The Chief Controlling Revenue-Authority may state any case referred to it under section 56, sub-section (2), or otherwise coming to its notice, and refer such case, with its own opinion thereon, —

(a) if it arises in a State to the High Court for that State;

(b) if it arises in the Union territory of Delhi, to the High Court of Delhi;

(c) if it arises in the Union territory of Arunachal Pradesh or Mizoram, to the Gauhati High Court (the High Court of Assam, Nagaland, Meghalaya, Manipur and Tripura;)

(d) if it arises in the Union territory of the Andaman and Nicobar Islands, to the High Court at Calcutta;

(e) if it arises in the Union territory of the [Lakshadweep], to the High Court of Kerala;

(ee) if it arises in the Union territory of Chandigarh, to the High Court of Punjab and Haryana;

(f) if it arises in the Union territory of Dadra and Nagar Haveli, to the High Court of Bombay.

(2) Every such case shall be decided by not less than three Judges of the High Court to which it is referred, and in case of difference the opinion of the majority shall prevail.

**58. Power of High Court to call for further particulars as to case stated.** — *If the High Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue-Authority by which it was stated, to make such additions thereto or alterations therein as the Court may direct in that behalf.*

**59. Procedure in disposing of case stated.** — (1) *The High Court upon the hearing of any such case, shall decide the questions raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded.*

(2) *The Court shall send to the Revenue-Authority by which the case was stated, a copy of such judgment under the seal of the Court and the signature of the Registrar; and the Revenue-Authority shall, on receiving such copy, dispose of the case conformably to such judgment."*

7. As would immediately be evident from the narrative aforesaid of the Reference Petition, reference is sought unilaterally, without there being any instrument chargeable to stamp duty and without there being any person liable for such stamp duty or to remission thereof under Notification dated 25<sup>th</sup> December, 1937 as admittedly being granted with respect to instruments of transfer between companies as described above and which remission, in the opinion of CCRA is not available / applicable since 1<sup>st</sup> October, 1958, inspite of dicta of this Court in ***Delhi Towers Limited*** supra and on which the petitioner CCRA in this Reference is seeking a judgment from this Court. Axiomatically, there was / is none to oppose the opinion expressed by the petitioner CCRA in the Reference Petition. We thus requested Mr. Rajeev Kumar Virmani, Senior Advocate to assist this Court as Amicus Curiae and to which he graciously agreed.

8. Being of the *prima facie* opinion:

- (i) that the Reference by CCRA under Section 57 could arise either out of a Reference under Section 56 by the Collector of Stamps to the CCRA itself as to the amount of duty with which any instrument is chargeable or otherwise coming to the notice of the CCRA; and
- (ii) that a Reference under Section 56 could be made only if the Collector entertains doubts as to the duty chargeable on an instrument while acting, either (a) under Section 31 i.e. when any instrument is brought to the Collector and the person bringing it applied to have the opinion of the Collector as to the duty with which it is chargeable; or (b) under Section 40, on impounding of insufficiently stamped document when tendered in evidence; or, (c) under Section 41, on production of a document not duly stamped, and finding the Reference to this Court having not arisen out of a Reference arising under Section 56;
- (iii) no 'case' was otherwise stated in the Reference Petition to have come to the notice of the CCRA; and,  
that without the said conditions being satisfied, the Reference was not maintainable, arguments were heard from the counsel for the petitioner CCRA and the learned Amicus Curiae on maintainability of the Reference and to some extent also on merits.

9. The learned Amicus Curiae placed the position with respect to maintainability of the Reference as under:-

- (a) Section 57 of the Act, invoking which Reference has been made, presupposes that there should be a 'case' i.e. set of facts and/or affected party before the CCRA for the CCRA to make the Reference. Attention in this regard is drawn to ***Somaiya Organics (India) Ltd. Vs. Board of Revenue*** (1986) 1 SCC 351, ***The Madras Refineries Ltd. Vs. The Chief Controlling Revenue Authority*** (1977) 2 SCC 308, ***Board of Revenue Vs. Rai Saheb Sidhnath Mehrotra*** AIR 1965 SC 1092; ***Dayal Singh Vs. Collector of Stamps*** ILR (1972) I Delhi; ***Chief Controlling Revenue Authority Vs. Satyawati Sood*** ILR (1972) II Delhi and ***In Re: The Indian Stamp Act*** ILR (1926) I Bombay 640, all on References under Section 57 and in all of which judgment was rendered in the context of a specific document/instrument subject of Reference Petition.
- (b) The existence of a 'case' before the CCRA is essential, though it need not necessarily be a pending case. Reference is maintainable even after the proceedings before the Revenue Authorities are over. Reliance in this context is placed on ***Chief Controlling Revenue Authority Vs. Maharashtra Sugar Mills Ltd.*** AIR 1950 SC 218, ***Union of India Vs. S. Sarup Singh*** 1967 SCC OnLine Del 28 and ***Banarsi Das Ahluwalia Vs. Chief Controlling Revenue Authority*** AIR 1968 SC 497.

- (c) The object of the duty/power to refer under Section 57 is that nobody should be left remediless; reliance is again placed on ***Banarsi Das Ahluwalia*** supra.
- (d) The issue in the present Reference has already been adjudicated by this Court in ***Delhi Towers Limited*** supra; it is further informed by CCRA itself that a similar question is pending before this Court in W.P.(C) no.7509/2015 titled ***PDS Multinational Fashions Ltd. Vs. Collector of Stamps***. The apprehension with which this Reference is sought is, that ***Delhi Towers Limited*** supra would come in the way of petitioner CCRA in the pending petition also;
- (e) CCRA contends ***Delhi Towers Limited*** supra to be *per incuriam*. If the judgment is *per incuriam* and the Bench in ***PDS Multinational Fashions Ltd.*** is satisfied in this respect, it can refer the matter to a Larger bench – the question whether ***Delhi Towers Limited*** is *per incuriam* or not cannot be subject matter of Reference. Reliance in this regard is placed on ***State of Bihar Vs. Kalika Kuer*** (2003) 5 SCC 448.
10. Else, on merits of the Reference, the learned Amicus Curiae stated:
- (f) Stamp (Punjab Amendment) Act, 1958 does not repeal or revoke the Notification of 25<sup>th</sup> December, 1937.
- (g) The Notification of 25<sup>th</sup> December, 1937 is not repugnant to Schedule-IA added by the Indian Stamp (Punjab Amendment) Act, 1958.

- (h) Section 24 of the General Clauses Act, 1897 will have no application since no enactment has been repealed and re-enacted in the present case. The question of Notification of 25<sup>th</sup> December, 1937 being inconsistent with any re-enacted provision would not arise.
- (i) Exemptions contained in Schedule IA are distinct from the reduction and remission contemplated by Section 9 of the Stamp Act and the argument that since Schedule-IA contains exemptions as stated in Section 3, remission in the Notification of 25<sup>th</sup> December, 1937 would cease to apply, being repugnant, is misconceived.
- (j) The aforesaid exemptions exempt certain species of instruments from chargeability to any stamp duty and are part of the parent legislation.
- (k) On the other hand remissions vide Notification of 25<sup>th</sup> December, 1937 are in exercise of powers under Section 9 of the Stamp Act and would apply to those instruments that would be chargeable to stamp duty in the normal course at the rates prescribed in Scheduled I/IA.
- (l) Such remission is granted by a subordinate legislation.
- (m) There can be no remission in respect of instruments that are exempt from duty.
- (n) The legislature in its wisdom chose to grant exemption to certain classes of instruments while conferring the power to grant

remission in respect of certain instruments that are otherwise chargeable.

- (o) Section 9 and Section 3 of the Stamp Act do not control each other. Section 3 is subject to the provisions of the Act which include Section 9, under which Notification of 25<sup>th</sup> December, 1937 was issued.
- (p) Section 9 confers an independent power of reduction/remission of duty and which power is independent of the levy prescribed by Section 3.
- (q) Section 9 is not entry specific and it is not at all necessary to issue a Notification referable to a particular Article in either Schedule-I or Schedule-IA.
- (r) The *non-obstante* clause in proviso to Section 3 of Stamp Act has overriding effect only qua clauses (a), (b) and (c) and Schedule-I set out in Section 3 of the Act. Section 9 is not affected by insertion of the proviso in Section 3 of the Act.
- (s) 1958 Amendment Act only substitutes the pre-existing Schedule-IA with the new Schedule-IA, without affecting any other provisions of the Act or notifications issued thereunder; thus the Notification of 25<sup>th</sup> December, 1937 is not at all affected by the 1958 Amendment and continues to apply.
- (t) Notification of 25<sup>th</sup> December, 1937 is not entry specific and deals with different classes of instruments; inapplicability of Schedule-I in Delhi by virtue of 1958 Amendment does not affect the applicability of the Notification of 25<sup>th</sup> December,

1937 to various instruments in Schedule-IA (brought about by the 1958 Amendment).

- (u) The remission granted under Section 9 would not be taken away by any change in the tariff in Schedule-IA or substitution of one Schedule-IA with another so long as there is an instrument of the class covered by the Notification of 25<sup>th</sup> December, 1937.
- (v) By virtue of Article 372 of the Constitution, Notification of 25<sup>th</sup> December, 1937 continues to apply even after coming into force of the Constitution of India.
- (w) Govt. of NCT of Delhi has not revoked the Notification of 25<sup>th</sup> December, 1937.

11. Per contra, the counsel for the petitioner CCRA, on the aspect of maintainability of the Reference has argued:

- (i) That Section 57 of the Act is not adjudicatory but advisory; there is thus no requirement, that before any Reference is made thereunder, there should be case pending.
- (ii) Reliance is placed on:
  - (a) *The Maharashtra Sugar Mills Ltd.* supra holding that Section 57 is not only for the benefit of the CCRA but enures also the benefit of the party affected by the assessment and can be demanded to be used, also by such a party and Section 57 is further coupled with a duty cast on CCRA, as a public officer, to do the right thing and when an important and intricate question of law in respect

of the construction of a document arises, it is incumbent to make a Reference.

- (b) ***Banarasi Dass Ahluwalia*** supra holding that an application for reference under Section 57 is competent, whether case is pending or not; that waiting for a case would cause loss to the public.

12. The counsel for the petitioner CCRA, on merits contended,

(i) That the 1937 Notification was in the context of Schedule-I of the Stamp Act and cannot apply once Schedule-I was substituted by Schedule-IA; that there is no automatic application of notification unless the State Government does so expressly.

(ii) Reliance is placed on:

- (A) ***AREVA T and D Lightning Arresters Pvt. Ltd. Vs. Additional Secretary Departmental of Revenue and Disaster Management Government of Puducherry*** 2009

(5) MLJ 622 relating to Puducherry, also a Union Territory and holding that there is no automatic application of any notification of Central Government and that unless the State Government notifies by a Rule or an order any decision to reduce or commit, the question of application of notification does not arise.

- (B) Judgment dated 2<sup>nd</sup> February, 2012 of the High Court of Calcutta in CP No.627/2011 titled ***Emami Biotech Limited & Anr. Vs. State*** but which only notices the contentions and does not decide anything.

- (C) Judgment dated 25<sup>th</sup> April, 2014 of the Division Bench of the High Court of Punjab & Haryana in CWP No.15164/2011 (O&M) titled ***Minder & Ors. Vs. State of Haryana & Ors.*** holding that the 1937 Notification would not be valid as the basic substratum of the notification had undergone sea change with the enactment of 1956 Act.
- (D) ***Qudrat Ullah Vs. Municipal Board, Bareilly*** AIR 1974 SC 396, in the context of U.P. (Temporary) Control of Rent and Eviction Act holding that the general principle is that an enactment which is repealed is to be treated as if it had never existed, except as to transactions past and closed.

13. Having heard the learned Amicus Curiae and the counsel for the petitioner CCRA fully on the aspect of maintainability of the Reference and being of the view the Reference is not maintainable, we halted further hearing the counsel for the petitioner CCRA on merits as it was felt that it is not incumbent upon us to, inspite of holding the Reference to be not maintainable, also adjudicate on merits, as the same would be detrimental in the larger interest.

14. We hold the Reference to be not maintainable for the following reasons:-

- A. In our view the language of the statute is plain and unambiguous and on a literal interpretation of the language of the statute itself, the Reference which the petitioner CCRA is empowered to make to this Court has to be of “a case” i.e. an

instrument/document chargeable to stamp duty and in the absence of “a case”, the power under Section 57 cannot be invoked in vacuum/abstract.

- B. Section 57(1) empowers the CCRA to “state any case” referred to it under Section 56(2) “or otherwise coming to its notice” and “refer such case”.
- C. It is not the contention that the Collector of Stamps, under Section 56(2), can make a Reference to CCRA ‘without any case’. Such Reference by the Collector can be only while acting under Sections 31, 40 & 41 of the Act and all of which are in the context of an instrument or document, either adjudication of proper stamp duty payable whereon is sought from the Collector or which is impounded or which is accidentally left unstamped. Thus when Section 57(1) empowers the CCRA to “state any case referred to it under Section 56(2)”, the case is in the context of an instrument or document.
- D. While interpreting the words “or otherwise coming to its notice” the word “case’ cannot be given any different meaning and has to necessarily mean adjudication of stamp duty qua an instrument or document which may have come to the notice of the CCRA otherwise than on a Reference by the Collector while acting under Sections 31, 40 or 41 of the Act.
- E. The words “or otherwise coming to its notice” cannot be read as empowering the CCRA to, without any specific document/instrument coming to its notice and without any need

for determination/adjudication of stamp duty with respect thereto by the High Court, make a Reference under Section 57 merely because CCRA sitting in its armchair is of the opinion that remission being granted to a certain category/class of documents is being wrongly granted and that a judgment of the High Court upholding the said remission is not correct, as is the position in this Reference Petition.

- F. The position is placed beyond any pale of controversy by Section 59(2) of the Act which requires this Court to, after deciding the question raised in the Reference made by the CCRA, forward its judgment to the CCRA and mandates the CCRA to, on receipt of such copy “dispose of the case conformably to such judgment”. If it were to be held that Reference by CCRA to this Court under Section 57 is permissible even in the absence of any instrument or document and in vacuum/abstract, merely on CCRA without any case before it seeking a legal opinion from this Court, there would be no question of the CCRA, on receiving the judgment of this Court disposing of the Reference, disposing of any case conformably to the judgment of this Court.
- G. The judgments relied upon by the counsel for the petitioner CCRA to justify the maintainability of this Reference, even without any instrument or document chargeable to stamp duty being for adjudication before it also are not found to be holding or supporting so. Rather, citing of the said judgments is a

classic example of a stray word or sentence in a judgment in the context of the controversy for adjudication therein not constituting a precedent.

- H. In *Maharashtra Sugar Mills Ltd.* supra, the Registrar of Documents being of the view that a document presented for registration was not sufficiently stamped, sent it to the Collector of Stamps. The Collector of Stamps was also of the view that the document was insufficiently stamped. The party to the document liable for stamp duty controverted. However the Collector of Stamps held the document to be insufficiently stamped and directed payment of deficient stamp duty and penalty. The party to the document liable for stamp duty filed a suit against the other party to the document, for declaration that the document did not fall in the class as held by the Collector but was of a different class and in the alternative for rectification of the document to truly reflect its intent. The suit was decided, directing rectification of the document. The outcome of the suit was reported to the Collector of Stamps and Reference under Section 57 of the Stamps Act demanded to the High Court. On the said request being not acceded to, the party to the document on whom demand for deficient stamp duty and penalty had been made, filed a writ petition seeking mandamus to the CCRA to make Reference under Section 57. The said writ petition was allowed and mandamus issued. The CCRA approached the Supreme Court. It was in this context that the

Supreme Court held that the power vested in the CCRA under Section 57 is an obligation and for the benefit not only of the CCRA but also of the other party, liable to pay the assessed stamp duty and who is materially interested, also meaning that a Reference cannot be unilateral by the CCRA and there necessarily has to be a 'other party'. It was yet further held by the Supreme Court that a decision on a Reference is not necessarily based only on the reading of the entries in the Schedule to the Stamp Act but may also depend upon the true construction of the document, again meaning that a Reference in vacuum, without there being any case, is not maintainable. Noticing the scheme of the Stamp Act, it was further observed that Chapter VI containing Section 57 is about the liability of an instrument to duty and the adjudication thereof, again indicating that there can be no Reference in vacuum without stamp duty with respect to any instrument or document to be determined/adjudicated. It would thus be seen that this judgment, rather than supporting the maintainability of the Reference is to the contrary.

- I. In ***Banarsi Das Ahluwalia*** supra, the contention of the CCRA which had been accepted by the High Court was, that since the Reference under Section 56 of the Act to the CCRA already stood disposed of and there was 'no pending case', the demand of the person liable to stamp duty on the instrument subject matter thereof on the CCRA to make a Reference under Section

57 of the Act to the High Court was not sustainable. It was then the contention of the CCRA, that for CCRA to make a Reference under Section 57, there has to be 'a pending case' before the CCRA. The said contention was rejected by the Supreme Court and it was held that the remedy available to a citizen under Section 57 cannot be negated merely because the CCRA has decided the Reference made to it or even if in pursuance thereto the deficient stamp duty and penalty has been paid/recovered. It was held that the Reference could be made thereafter also and if decided in favour of the person liable to stamp duty, the excess stamp duty and penalty paid could always be refunded. Reference in this regard was made to Section 59(2) supra requiring disposal of the case in conformity with the judgment on the Reference. It would thus be seen, that not only the said judgment also cannot be read as supporting a Reference in vacuum, as CCRA has sought in this case but the argument of CCRA itself then was contrary to what is contended before this Court. Merely because it was held in the context of the said judgment that there need not be a pending case, cannot be construed as meaning that even in the absence of a disposed of case or any specific document or instrument, Reference is maintainable.

- J. If it were to be held that Reference under Section 57 can be sought in abstract, with the opinion of the CCRA alone being placed before this Court, the person liable for stamp duty on the

class of instruments with respect to which Reference is sought, if adversely affected by the judgment made of this Court on such Reference, would have no opportunity to its submissions, neither before the Collector of Stamps nor before the CCRA nor before a Bench of this Court of three or less Judges and in each case a larger Bench will have to be constituted for considering the challenge, thereby adversely affecting the rights of the persons liable for the stamp duty on such instruments.

- K. The view which we have taken, we find also taken by the Reference Court in *Usuf Dadabhai Vs. Chand Mahomed* AIR 1926 Bom 51 (FB). It was held (i) that there must be a case which is to be disposed of by the Revenue Authority on receipt of the High Court judgment and if a reference in abstract were to be entertained there would be no case for the Revenue-Authority for disposal on receipt of the judgment of the Court; (ii) that Section 57 (1) permits reference in relation to “any case” whether referred to the CCRA under Section 56 or otherwise coming to its notice and thus there necessarily has to be a “case pending” and when there is no pending case there can be no reference; (iii) that no substantial question of law can be decided in abstract; and, (iv) that an obligation of the CCRA to make a reference under Section 57 is enforceable obligation and which action implies existence of a case.

- L. We also find the aforesaid to have been held by the Reference Court in ***In Re: Marine Insurance Policies*** MANU/WB/0463/1929 to be the consistent view of all the High Courts in India.
- M. Thereafter also, the same view was taken by the Reference Court in ***Chief Controlling Revenue Authority Vs. Madras Industrial Investment Corporation*** 79 LW 380, where it was held that it is not permissible to the CCRA under the guise of its powers under Section 57, to obtain the determination by this Court of a hypothetical question; a purely abstract proposition of law or a hypothesis in law however likely it may be that a case corresponding to that hypothesis may later arise in practice, cannot be referred to the High Court for resolution of a conflict of cases or for decisions under Section 57; it is essential that there should be in existence an actual case, which has to be decided in the light of the opinion furnished by the Court with regard to an actual document, and not merely to some contemplated document.
- N. Mention may also be made of the ***State of Bihar Vs. Rai Bahadur Hurdut Roy Moti Lall Jute Mills*** AIR 1960 SC 378 and ***Dr. N.C. Singhal Vs. Union of India*** (1980) 3 SCC 29 holding that if the statutory provisions impugned are not attracted, there is no occasion to decide on the vires thereof inasmuch as any decision on the said question would in such a case be purely academic.

15. Having found the Reference not maintainable, if we still proceed to adjudicate the Reference on merits, the same will defeat at least one of the reasons given by us above for holding the Reference to be not maintainable.

16. Resultantly the Reference is disposed of as not maintainable and is returned. Needless to state that this will not come in the way of CCRA seeking a fresh Reference in an appropriate case coming before it including with respect to a document or instrument of a class with respect to which Reference in abstract was sought by way of this Reference.

17. We express our gratitude to Mr. Rajeev K. Virmani, Sr. Advocate for the erudite assistance rendered, at the cost of his other professional engagements.

No costs.

**RAJIV SAHAI ENDLAW, J.**

**SANJIV KHANNA, J.**

**JAYANT NATH, J.**

**JANUARY 17, 2019**

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