IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2020

CORAM :

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.11124 of 2020

Seyed Ismail ... Petitioner

Vs.

1. The District Registrar,
   O/o. the District Registrar,
   No.476, "C, Beach Rd, Mannady,
   Chennai Port Trust, Chennai - 600 001.

2. The Collector,
   O/o. the Collector, Chennai,
   No.62, Rajaji Salai,
   Fourth Floor, Chennai - 600 001.

3. The Inspector General of Registration,
   No.100, Santhome High Road,
   Mullima Nagar, Mandavelipakkam,
   Raja Annamalai Puram, Chennai - 600 028. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records relating to the impugned order dated 05.12.2019 in Ref.No.1127/A/A7/2019 and to quash the same as illegal by directing the first and second respondents to refund a sum of Rs.2,75,000/- (Rupees Two Lakhs Seventy Five Thousand Only) payable under the unused stamp papers namely

ix) stamp paper No. C903919 dated 12.02.2018 - Rs.25,000/-
x) stamp paper No. C903920 dated 12.02.2018 - Rs.25,000/-
xi) stamp paper No. C903921 dated 12.02.2018 - Rs.25,000/-
xii) stamp paper No. C903922 dated 12.02.2018 - Rs.25,000/-
xiii) stamp paper No. C903923 dated 13.02.2018 - Rs.25,000/-
xiv) stamp paper No. C903924 dated 13.02.2018 - Rs.25,000/-
xv) stamp paper No. C904062 dated 13.02.2018 - Rs.25,000/-
xvi) stamp paper No.C904063 dated 13.02.2018 - Rs.25,000/-

For Petitioner : Mr.R.Manickavel
For R1 and R3 : Mr.T.M.Pappaiah, Special Government Pleader
For R2 : Mr.M.Manigopi Government Advocate

O R D E R

On consent given by both sides, the main writ petition itself has been taken up for final hearing.

2.This writ petition has been filed challenging the impugned letter of the 1st respondent, dated 05.12.2019, wherein, the request made by the petitioner for refund of the amount towards unused stamp papers was rejected by the 1st respondent on the ground that the claim was made beyond the period of limitation.

3.The case of the petitioner is that he wanted to purchase a property jointly along with his wife, for which, he purchased stamp papers. Unfortunately, the transaction did not go through immediately. The petitioner was not able to utilise the stamp papers for the purpose for which it was purchased. The petitioner, therefore, made a representation seeking for refund of the value of the unused stamp papers. The 1st respondent rejected the claim made by the petitioner on the ground that the application for refund is time barred under Section 50 of the Indian Stamp Act, 1899. Aggrieved by the same, the present writ petition has been filed before this Court.

4.Mr.R.Manickavel, learned counsel appearing for the petitioner, submitted that the 1st respondent had proceeded to pass the order even without conducting an enquiry, which is mandatory under Section 50 of the Indian Stamp Act. The learned counsel further submitted that the petitioner was not able to utilise the stamp papers due to the introduction of a new rule and therefore, the petitioner was entitled for the refund of the value of the unused stamp papers. The learned counsel, in order to substantiate his submission, brought to the notice of this Court, Section 50(3) of the Indian Stamp Act. The learned counsel for the petitioner further submitted that the issue involved in the present writ petition was already dealt with by this Court in A.Ilango v. The District Collector, Thiruvallur and others reported in CDJ 2017 MHC 8540.

5.Per contra, Mr.T.M.Pappaiah, learned Special Government Pleader, appearing on behalf of the respondents 1 and 3 submitted that, Section 50 of the Indian Stamp Act specifically provides for a period of limitation and the petitioner has submitted the application for refund of the value of unused stamp papers beyond the period of limitation. Therefore, the learned counsel submitted that there is no illegality in the order passed by the 1st respondent.

6.This Court has carefully considered the submissions made on either side and perused the materials available on record.

7.There is no serious dispute on the facts on the case and the only issue that requires consideration is whether the order passed by the 1st respondent requires interference and whether a direction can be issued to the respondents to refund the value of the unused stamp papers.

8.It is seen from records that the petitioner had purchased the stamp papers for a total value of Rs.2,75,000/- in various denominations, but the sale transaction got delayed due to circumstances beyond the control of the petitioner. In the meantime, a new rule was introduced, wherein, the stamp vendors were required to upload the details of the stamp papers that are sold and those details will have to tally at the time when the document is presented for registration, failing which, the document will not be accepted for registration. In this case, the stamp papers were purchased during the month of February, 2018 and the new rule came into force on 20.09.2018. In view of the same, the petitioner was not in a position to use the stamp papers that were already purchased.

9.Section 50 of the Indian Stamp Act is extracted hereunder :

"50.Application for relief under section 49 when to be made.—The application for relief under section 49 shall be made within the following periods, that is to say, —

(1)in the cases mentioned in clause (d) (5), within two months of the date of the instrument:

(2)in the case of a stamped paper on which no instrument has been executed by any of the parties thereto, within six months after the stamp has been spoiled:

(3)in the case of a stamped paper in which an instrument has been executed by any of the parties thereto, within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed:

Provided that, —

(a)when the spoiled instrument has been for sufficient reasons sent out of India, the application may be made within six months after it has been received back in India;

(b)when, from unavoidable circumstances, any instrument for which another instrument has been substituted, cannot be given up to be cancelled within the aforesaid period, the application may be made within six months after the date of execution of the substituted instrument."

10.A reading of the above provision shows that, where the stamp paper has been purchased on which no instrument has been executed by any of the parties, within six months after the date of purchase of stamp paper, a refund can be sought for the unused stamp paper. The provision itself provides for limitation of six months for the purpose of claiming the refund.

11.The issue that is involved in the present writ petition is as to whether the 1st respondent can entertain an application which is presented after six months from the date of purchase of the stamp paper.

12.In the present case, the petitioner never intended not to put the stamp papers to use. The petitioner faced a very peculiar problem, where there was a change in rule, as a result of which, the petitioner was forced to purchase new stamp papers and thereafter, the registration was completed during January, 2019. If the new rule had not come into force, the petitioner would have very well used the same stamp papers for execution of the sale deed. Therefore, the peculiarity of the situation is that the petitioner was placed in a disadvantageous position due to the change in rule, upon which, the petitioner had no control.

13.This Court is reminded of the maxim, as expounded in Sk.Salim Haji Abdul Khayumsab v. Kumar, (2006) 1 SCC 46 and the same is extracted hereunder :-

> "lex non cogit ad impossibilia, the law does not compel a man to do what he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorism, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases."

14.The provision namely Section 50 of the Indian Stamp Act does not specifically provide for a situation where an application is made beyond the period specified in the said provision. In the absence of such provision, the 1st respondent cannot obviously entertain the application. However, that cannot defeat the right of the petitioner to get the refund of the amount that was spent by him for purchase of the stamp papers. The peculiar facts of this case, wherein the petitioner had no control over the change in circumstances, make this Court come to the rescue of the petitioner in exercise of its jurisdiction under Article 226 of the Constitution of India. The circumstances under which a stamp paper does not get utilised as contemplated under Section 50 of the Indian Stamp Act, does not cover the facts of the present case. It is a situation which was not contemplated under Section 50 of the Indian Stamp Act.

Therefore, this Court has to necessarily come to the rescue of the petitioner and ensure that the petitioner gets the entire value of the unused stamp papers.

15.The Delhi High Court in the case of Vimal Kumar Saigal Vs. Office of Collector of Stamps reported in 2020 SCC Online Del 289, in almost similar circumstances held as follows :-

> "31.As held by the Supreme Court in Committee GFIL vs. Libra Build Tech Pvt. Limited & Ors., (2015) 16 SCC 31, interpretation to be given to Section 49 and 50 of the Act is one which advances the cause of justice and is based on the principle of equity. It is also to be kept in view that even in absence of a provision providing for refund, the Stamp Duty or any part of the Duty collected in excess without authority of law cannot be retained by the respondents as this is a W.P.(C) 9699/2016 Page 11 mandate of Article 265 of the Constitution of India (Piyush Aggarwal & Anr. vs. Govt of NCT. Delhi & Ors., 2005(81)DRJ, 186).
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> 32.I am mindful of the principle of law that a fiscal statute must be interpreted strictly and considerations of hardship or equity are not relevant for construing such statute, at the same time, Section 49 of the Act needs to be interpreted in conformity with Article 265 of the Constitution of India. The respondents cannot be entitled to retain the amount of the Stamp Duty for the same transaction, twice.
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> ..
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> 34.The claim of the petitioner relying upon Section 49 (d)(8) of the Act is also justified. Section 49(d)(8) provides that where the Stamp used for an instrument is inadvertently and undesignedly spoiled and other instrument is executed for the same purpose, the Stamp used in the previous instrument and allowance on the Stamp spoiled, may be granted by the Collector of Stamp. In the present case, as the Stamp used for the previous Conveyance Deed has been rendered useless/spoiled for the reason of non registration of the said document due to inadvertence of the petitioner and the subsequent Conveyance Deed has been properly executed, stamped and registered, the petitioner would also be entitled to the refund of the Stamp Duty under Section 49(d)(8) of the Act."

16.The Hon'ble Supreme Court in Committee-GFIL v. Libra Buildtech (P) Ltd., (2015) 16 SCC 31, held as follows :-

> "29.This case reminds us of the observations made by M.C. Chagla, C.J. in Firm Kaluram Sitaram v. Dominion of India [Firm Kaluram Sitaram v. Dominion of India, 1953 SCC OnLine Bom 39 : AIR 1954 Bom 50] . The learned Chief Justice in his distinctive style of writing observed as under in para 19: (Firm Kaluram case [Firm Kaluram Sitaram v. Dominion of India, 1953 SCC OnLine Bom 39 : AIR 1954 Bom 50] , SCC OnLine Bom)
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> "19. … we have often had occasion to say that when the State deals with a citizen it should not ordinarily rely on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent Judges, as an honest person."
>
> We are in respectful agreement with the aforementioned observations, as in our considered opinion these observations apply fully to the case in hand against the State because except the plea of limitation, the State has no case to defend their action.
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> 30.Even apart from what we have held above, when we examine the case of the applicants in the light of Sections 49 and 50 of the Act, we find that the case of the applicants can be brought under Section 49(d)(2) read with Section 50(3) of the Act to enable the State to entertain the application made by the applicants seeking refund of stamp duty amount. The interpretation, which advances the cause of justice and is based on the principle of equity, should be preferred. We hereby do so."

17.Where the Act itself stipulates the time limit, the same cannot be extended by applying the Limitation Act. In this regard, useful reference can be made to the judgment of the Hon'ble Supreme Court in Commissioner of Customs and Excise v. M/s.Hongo India (P) Ltd. reported in 2009 (5) SCC 791. Therefore, obviously, the 1st respondent had no power under the Act to condone the delay.

18.In view of the above discussion, taking into consideration the peculiar facts and circumstances of the case and in view of the fact that this Court should advance the cause of justice, this Court interferes with the impugned letter issued by the 1st respondent dated 05.12.2019 and the same is hereby quashed. The petitioner is directed to make a representation to the 1st and 2nd respondents for refund of the total value of the unused stamp papers and the 1st respondent, on receipt of the representation, shall refund the total value of the unused stamp papers to the petitioner within a period of four weeks from the date of receipt of the representation from the petitioner.

This writ petition is accordingly allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The District Registrar,
O/o. the District Registrar,
No.476, "C, Beach Rd, Mannady,
Chennai Port Trust, Chennai - 600 001.

2.The Collector,
O/o. the Collector, Chennai,
No.62, Rajaji Salai,
Fourth Floor, Chennai - 600 001.

3.The Inspector General of Registration,
No.100, Santhome High Road,
Mullima Nagar, Mandavelipakkam,
Raja Annamalai Puram, Chennai - 600 028.

+1cc to Mr.R.Manickavel, Advocate, in Sr.27582/2020

+1cc to the Government Pleader in Sr.28037/2020

W.P.No.11124 of 2020

SSV (CO)
RV (10/09/2020)