IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE
AND
The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.3679 of 2019

1.The State of Tamil Nadu,
rep. by its Secretary,
Commercial Taxes/Registration,
Fort St. George, Chennai 600 009.

2.The Joint Sub Registrar-I,
Office of the Sub Registrar,
Collectorate Campus,
State Bank Road, Coimbatore 641 018.

3.Inspector General of Registration and
Chief Controlling Revenue Authority,
No.100, Santhome High Road,
Mylapore, Chennai 600 028. .. Appellants

-vs-

Gestione Consultin India Private Limited,
rep. by its Director, Mr.A.P.Ramachandran. .. Respondent

Appeal filed under Clause 15 of the Letters Patent against the order dated 29.03.2019 passed in W.P.No.22019 of 2017 on the file of this Court.

Prayer in WP.22019/17: Writ Petition praying this court to issue a writ of certiorarified mandamus, calling for the records on the file of the third respondent in Pa.Ma.No.55663/P1/2016 dated 19,April 2017 and quash the same and direct the respondents not to demand any stamp duty on the certified copy of this Hon'ble Court dated 22/06/2015 in CP 215 and CP 216/2015 and to register the sale deed dated 13/11/2015(Document No. P94/2015) and the sale deed dated 23/11/2015 (Document No.99/2015) without payment of any additional stamp duty or additional registration fees.

For Appellants : Mr.P.H.Arvindh Pandian, Addl. Adv. General assisted by Mr.T.M.Pappiah, Spl.G.P.

For Respondent : Mr.C.Seethapathy

JUDGMENT

(Judgment of the Court was deliveredby The Hon'ble Chief Justice)

We have heard Sri.P.H.Arvindh Pandian, learned Additional Advocate General, for the appellants/State and the learned counsel for the sole respondent.

2.This appeal arises out of a dispute on payment of stamp duty on documents of amalgamation. The rate of duty was in dispute and having noticed the arguments advanced, the Division Bench, on 02.12.2019, has passed the following order:-

> "A mention was made by Sri.Ramakrishnan Veeraraghavan, learned Senior Counsel appearing for the respondent for a modification of the interim order dated 04.11.2019 with a prayer that the respondent herein undertakes to pay 2% of the Stamp Duty on Document No.P-50 of 2018 as well as registration charges that are leviable thereon including on the document of amalgamation, and he prays that subject to the above the Registering Authority may be directed to release the document.
>
> 2. Sri.P.H. Aravind Pandian, learned Additional Advocate General, appearing for the appellant/State opposes the prayer but submits that such modification should not affect any future transaction, keeping in view the fact that the State has every hope of success in this Writ Appeal.
>
> 3. Having considered the submissions raised, we find that the respondent/writ petitioner has succeeded before the learned Single Judge and we are also informed that an interim order was operating in favour of the respondent/writ petitioner during the pendency of the writ petition. However, keeping in view the objection raised by the learned Additional Advocate General, we modify the interim order dated 04.11.2019

to the effect that the respondent/writ petitioner shall be entitled to the release of Document No.P-50 of 2018 within a week subject to payment of 2% of Stamp Duty as well as Rs.30,000/-(Rupees Thirty Thousand only) separately for the Document No.P-50 of 2018 as well as the amalgamation document. This shall be subject to the final outcome of this appeal.

4. List the matter as prayed on 20.01.2020."

3.Another order was passed on 24.01.2020, whereafter some sale deeds were released and they were made subject to the interim order passed herein. It has also been pointed out that even before the learned single Judge, certain sale deeds had been released subject to the same conditions.

4.On 29.07.2020, the Court was informed by the learned counsel for the State that a policy decision has been taken and a Government Order has been issued, as such the matter may be considered accordingly. The Government Order in G.O. (Ms.) No.47, Commercial Taxes and Registration (J1) Department, dated 19.02.2020 has been placed before us, which is reproduced as under:-

"ORDER:

In the Government Order first read above, the Government reduced the stamp duty and registration fees in respect of instruments evidencing transfer of property regarding amalgamation or reconstruction of companies.

2. The Inspector General of Registration in the reference second read above has sent proposals to Government for giving retrospective effect from 01.04.1956 to Notification-I issued with the Government Order first read above so that all the Schemes relating to amalgamation or reconstruction of companies by the High Court or the National Company Law Tribunal, as the case may be, sanctioned hitherto shall also become eligible for the Stamp Duty reduction granted in the said Notification.

3. The Government have decided to accept the same and accordingly issue the following orders:-

(a) The Stamp Duty reduction granted through the Notification-I of the Government Order first read above shall be given retrospective effect with effect from 01.04.1956 so that all the Schemes relating to amalgamation or reconstruction of companies by the High Court or the National Company Law Tribunal, as the case may be, sanctioned hitherto shall also become eligible for the Stamp Duty reduction granted in the said Notification:

(b) For the purpose of calculation of Stamp Duty in respect of such schemes, the market value of the immovable property shall be reckoned as the market value set-forth in the scheme of amalgamation or reconstruction of companies or if not set-forth therein, the market value of the immovable property shall be as per the guideline register prevailing on the date of order sanctioning the scheme:

(c) In respect of such instruments which consist of immovable property situated outside the State of Tamil Nadu, then Stamp Duty shall not be levied on the property which is situated outside the State of Tamil Nadu:

(d) For the purpose of calculation of Stamp Duty, the market value of the shares of an unlisted company shall be reckoned as the market value set-forth in the scheme of amalgamation or reconstruction of companies or if not set-forth therein, the market value of the shares shall be the value of shares found in the audited balance sheets of the companies filed with the Registrar of Companies immediately before the date of order sanctioning the scheme:

(e) If any other instrument is subsequently executed between the same companies under the said scheme for the sole purpose of reducing the terms of the scheme into writing and the subsequent instrument is found to be duly stamped with the duty of two percent of the market value of the immovable property or 0.6 percent of the aggregate of the market value of the shares, whichever is higher, subject to a maximum of Rs.25 crores (Rupees twenty five crores only), the principal instrument of amalgamation or reconstruction shall be deemed to have been duly stamped:

(f) If the principal instrument of amalgamation or reconstruction is found to be duly stamped with the duty of two percent of the market value of the immovable property or 0.6 percent of the aggregate of the market value of the shares, whichever is higher, any other subsequent instrument executed between the same companies under the said scheme for the sole purpose of reducing the terms of the scheme into writing, the subsequent instrument shall be deemed to have been duly stamped.

4. The Government accordingly direct that the notification appended to this order will be published in an extraordinary issue of the Tamil Nadu Government Gazette, dated 19.02.2020. The Works Manager, Government Central Press is requested to send 50 copies to the Government and 1000 copies to the Inspector General of Registration of the gazette in which the notification is published."

5.Learned Additional Advocate General contends that in the event the respondent is agreeable to comply in terms of the said Government Order, the matter can be disposed of on the same terms.

6.Learned counsel for the respondent has stated that the respondent petitioner will abide by the terms and conditions of the aforesaid quoted Government Order and consequently, the dispute stands resolved between the parties by virtue of the promulgation of the said Government Order.

Accordingly, the Writ Appeal is disposed of on the said terms, with a further direction that any endorsement on the sale deeds, imposing a condition relating to the pendency of the litigation before the High Court that has given rise to this appeal including the writ petition filed earlier, shall now stand effaced and the documents shall be read accordingly. No costs.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

sra

To

1.The Secretary to Govt. of Tamil Nadu,
Commercial Taxes/Registration,
Fort St. George, Chennai 600 009.

Page numbers

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+1cc to the Government Pleader SR.27090

AJS(CO)
CB(22/10/2020)