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

Reserved on: 29.11.2019
Date of Decision: 16.01.2020

\+   W.P.(C) 9699/2016

VIMAL KUMAR SAIGAL ..... Petitioner

Through: Mr.Divyanshu Goyel, Adv. with petitioner in person.

versus

OFFICE OF COLLECTOR OF STAMPS & ORS ..... Respondents

Through: Mr.Gautam Narayan, ASC/GNCTD with Ms.Shivani Vij & Ms.Dacchita Shahi, Advs.
Ms.Manika Tripathy, Mr.Ashutosh Kaushik & Mr.Brahm Kr. Pandey, Advs. for DDA.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

1. This petition has been filed challenging the order dated 07.06.2016 passed by the Collector of Stamps, rejecting the application of the petitioner seeking refund of the Stamp Duty on the ground that it does not fall within the provision of Section 49 of the Indian Stamp Act, 1899 (hereinafter referred to as the 'Act'). The petitioner consequently prays for refund of the Stamp Duty alongwith interest at the rate of 10% per annum.

2. The petitioner was allotted Unit No. 204, LSC, Pocket D & E, Sarita Vihar, New Delhi, by the Delhi Development Authority (DDA) vide letter dated 29.01.2007. The petitioner was provided with four copies of the Conveyance Deed by the DDA to be submitted with the office of the Collector of Stamps, New Delhi for adjudication of the Stamp Duty thereon.

3. The petitioner complied with the said condition and the Stamp Duty was adjudicated to be Rs. 2,86,020/- at the then prevailing rate of 8%. The same was duly deposited by the petitioner on 23.04.2007 and a Conveyance Deed dated 16.11.2007 was executed between the petitioner and the DDA for the abovementioned Unit.

4. It is the case of the petitioner that it is only in the year 2011 that the petitioner realized that he had failed to get the Conveyance Deed registered with the office of the Sub-Registrar of Documents. It is further the case of the petitioner that upon enquiry with the DDA, the petitioner was informed that the same Conveyance Deed could not be registered and the only remedy with the petitioner was to apply for a new Conveyance Deed, pay the required Stamp Duty again, and then seek refund of the amount of duty paid on the earlier Conveyance Deed dated 16.11.2007.

5. Accordingly, the petitioner applied with the DDA for issuance of fresh Conveyance Deed vide his letter dated 23.11.2011 and thereafter, received four sets of fresh Conveyance Deed for adjudication of the Stamp Duty vide letter dated 08.12.2011 from the DDA.

6. The Stamp Duty on the fresh Conveyance Deed was adjudicated to be of Rs. 2,14,525/- which was duly deposited by the petitioner on 14.12.2011 and the fresh Conveyance Deed was executed between the petitioner and the DDA on 11.01.2012, and duly registered with the Sub-Registrar of Documents on 12.01.2012.

7. It is pertinent to note here that the reduction in the Stamp Duty was due to reduction in the rates of Stamp Duty vide Notifications dated 13.11.2007 and 19.11.2007 of the Government of NCT of Delhi.

8. On 23.01.2012, that is, within 12 days of the execution of the fresh Conveyance Deed, the petitioner applied for refund of the excess Stamp Duty, annexing therewith two original copies of the earlier cancelled Conveyance Deed dated 16.11.2007 and the letter dated 18.01.2012 from the DDA.

9. The Collector of Stamp, however, by its letter dated 09.02.2012, called upon the DDA to clarify the reasons for non registration of the Conveyance Deed dated 16.11.2007.

10. DDA, in turn, by its letter dated 12.03.2012 informed the respondent no. 1 that the earlier Conveyance Deed could not be registered by the petitioner within the stipulated period due to lack of knowledge of the petitioner.

11. The respondent no. 1 by its further letter dated 19.07.2012, called upon the petitioner to explain the reasons for delay in submitting the application for refund of the Stamp Duty. The

petitioner claims to have submitted the same in form of an affidavit dated 30.07.2012.

12. The respondent no. 1, however, by an order dated 16.04.2013, was pleased to reject the application of the petitioner seeking refund of the Stamp Duty. The appeal filed by the petitioner before the Divisional Commissioner/respondent no. 2 was also rejected and a second order dated 27.07.2013 was received from respondent no. 1.

13. The petitioner challenged the same before the Lieutenant Governor, Government of NCT of Delhi, which also was rejected and communicated by the reply dated 17.08.2013.

14. On 05.06.2015, the petitioner made a fresh application seeking refund of the Stamp Duty by relying upon the Circular dated 03.01.2003 issued by the respondent no. 2, which reads as under:-

> *"The Sub-Registrars were directed not to entertain the conveyance deeds which were revalidated by the DDA/L&DO after the expiry of the prescribed period of 8 months vide Circular No. F1(32)/Regn./Div.Com./2002/155, dated 13.08.2002. The problem with regard to registration of conveyance deeds issued by the DDA arose because of indiscriminate extension and revalidation of date of execution of conveyance deeds were done and the stipulated time limit of 8 months was not adhered to. The powers of condonation of the time between the date of execution and date of registration are conferred on the Registrars of the Districts upto a period of 8 months.*
>
> *The remedy in such cases is to execute a fresh instrument in favour of the allottees by DDA/L&DO by proper payment of stamp duty, so that the documents can be registered by the allottees within a period of 4 months. After getting the*

registration of fresh instruments done by allottees, they can get the refund of stamp duty paid on the previous instruments.

Under the circumstances, the Collectors of Stamp are hereby directed to refund the stamp duty to the allotteess on the previous instruments within a period of 6 months from the date of registration of the substituted instruments as per the provisions of Section 49(d)(6) read with Section 53 of the Indian Stamps Act, 1899 without any deduction of the amount.

<u>The Collector of Stamps (Chanakyapuri), New Delhi District has been authorized to assess stamp duty for all the DDA lease/conveyance deeds</u> irrespective of location of the property in order to provide single window facility for assessment and collection of stamp duty to the allottees. Similary, <u>the Sub-Registrar (New Delhi District) has been authorized to register all documents of DDA property in Delhi.</u>

In view of the above, all the Collectors of Stamp and Sub-Registrars are hereby directed to follow such instructions strictly in order to avoid inconvenience to the allottees."

15. A reading of the above Circular would clearly show that the instructions had been issued to the Collector of Stamps and Sub-Registrars, including DDA, that instead of revalidating the Conveyance Deed, DDA is to execute fresh Conveyance Deed, and after getting the same registered, the allottees can get the refund of the Stamp Duty paid on the previous instruments. In fact, a direction had been issued to the Collector of Stamps to refund the Stamp duty to the allottees on the previous instruments within a period of six months from the date of the registration of the substituted instruments by placing reliance on Section 49(d)(6) read with Section 53 of the Act.

16. The application dated 05.06.2015 of the petitioner was also rejected by the respondent no. 1 vide its order dated 02.07.2015.

17. The petitioner challenged the above orders by way of a Writ Petition, being WP (C) 3677/2016, which was allowed by this Court by its order dated 02.05.2016, directing the respondent no. 1 to decide petitioner's applications dated 23.01.2012 and 05.06.2015 by way of a reasoned order within a period of eight weeks. The earlier orders dated 16.04.2013, 17.08.2013 and 02.07.2015, rejecting the application of the petitioner for refund of Stamp Duty, were set aside by this Court.

18. The respondent no. 1, however, by way of the Impugned Order dated 07.06.2016, again rejected the application of the petitioner on the ground that the Stamp on the previous Conveyance Deed cannot be stated to be spoiled and remains to be a valid instrument in itself. Respondent no. 1 has further held that as the second instrument was executed on a lesser Stamp Duty, provision of Section 49(d)(6) would not be applicable.

19. The petitioner has filed the present petition feeling aggrieved of the above order.

20. The learned counsel for the petitioner submits that the Impugned Order is liable to be set aside inasmuch as it fails to appreciate that the petitioner was entitled to refund of the Stamp Duty in terms of Section 49(d)(6) and Section 49(d)(8) of the Act. He submits that in the present case, for reason of non registration of the earlier Conveyance Deed, the earlier Stamp was rendered spoiled and therefore, Section 49(d)(8) was clearly attracted.

21. The learned counsel for the petitioner further submits that even the Circular dated 03.01.2003 clearly provided for applicability of Section 49(d)(6) of the Act to cases where fresh Conveyance Deed is executed for any reason whatsoever. He submits that in view of such Circular, the petitioner had a legitimate expectation for the refund of the Stamp Duty.

22. As far as the reduction in the Stamp Duty for the subsequent Conveyance Deed is concerned, he submits that as the refund was being sought of the lesser amount, no loss was caused to the respondents and the refund of the Stamp Duty should not be refused on such hypertechnical ground.

23. He further submits that the respondents collected the Stamp Duty twiceover for the same transaction, the same being prohibited under Article 265 of the Constitution of India.

24. On the other hand, the learned counsel for the respondents submits that the registration of the Conveyance Deed being mandatory in nature, the petitioner cannot plead ignorance of law as an excuse for non registration of the earlier Conveyance Deed. Relying upon the judgments of the Supreme Court in ***Dipak Babaria & Anr. vs. State of Gujarat & Ors.***, (2014) 3 SCC 502 and ***Abdul Jaleel vs. State of Kerala***, 2005 (3) KLT 807, he submits that as Section 50(3) of the Act prescribed a period of six months from the date of execution of the documents as an outer period for making an application seeking refund of the Stamp Duty, and Section 49(d)(6) of the Act prescribes that the subsequent instruments must not be on a lesser Stamp Duty,

the petitioner has been rightly held not entitled to its claim for refund of the Stamp Duty.

25. As far as the Circular dated 03.01.2003 is concerned, he submits that executive orders cannot override, alter or amend the Statutory Rules and Regulations. He places reliance on the judgments of the Supreme Court in ***K. Kuppusamy & Anr. vs. State of Tamil Nadu & Ors***., (1998) 8 SCC 469; ***Ajaya Kumar Das vs. State of Orissa & Ors.***, (2011) 11 SCC 136; and ***State of Orissa & Ors. vs. Prasana Kumar Sahoo***, (2007) 15 SCC 129.

26. He further submits that the claim of the petitioner cannot be allowed merely by adopting principle of equity as the Act being fiscal in nature, has to be interpreted strictly and literally and consideration of hardship or equity are not relevant while construing the Act. He places reliance on the judgment of the Supreme Court in ***ALD Automotive Pvt. Ltd. vs. The Commercial Tax Officer & Ors.***, 2018 SCC OnLine SC 1945 and ***Govt. of Andhra Pradesh & Ors. vs. P. Laxmi Devi***, (2008) 4 SCC 720.

27. I have considered the submissions made by the learned counsels for the parties. At the outset reference needs to be made to Section 49(d)(6) and (8) and Section 50 of the Act. The same are reproduced hereinunder:-

> *"49.* ***Allowance for spoiled stamps.*** *— Subject to such rules as may be made by the State Government as to the evidence to be required or, the enquiry to be made, the Collector may, on application made with the period prescribed in section 50,*

and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases herein after mentioned, namely: —

xxxxxxx

(d) the stamp used for an instrument executed by any party thereto which—

xxxxxx

(6) become useless in consequence of the transaction intended to be thereby effected being effected by some other instrument between the same parties and bearing a stamp of not less value;

xxxxxx

(8) is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped:

xxxxxxx

*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."

28. A reading of Section 49(d)(6) of the Act would show that where the Stamp used for an instrument becomes useless in consequence of transaction intended having been thereby effected by some other instrument, the Collector of Stamps, on an application made within the period prescribed under Section 50, may make an allowance under Section 53 of the Act for the Stamp used in the previous instrument, provided that the Stamp in the subsequent document is not of lesser value.

29. As noted hereinabove, the respondent no. 1 has refused refund of the Stamp Duty on the ground that the Stamp on the subsequent Conveyance Deed was of a lesser value than the earlier Conveyance Deed. In reaching such conclusion, the respondent no. 1 has clearly ignored that the Stamp on the subsequent Conveyance Deed was lesser only for the reason that the Government of NCT of Delhi by Notifications dated 13.11.2007 and 19.11.2007, had reduced the Stamp Duty from 5% to 3% with effect from 20.11.2007. It is, however, not denied that the earlier Conveyance Deed had become useless for purposes of conveying the title in favour of the petitioner in

the said Unit. It is for this reason that the subsequent Conveyance Deed was executed between the petitioner and the DDA for purposes of conveying the title in the Unit to the petitioner.

30. In my opinion, the words "bearing a Stamp of not less value" are intended only to ensure that the person seeking refund of the Stamp Duty does not execute the subsequent document merely to save on the Stamp Duty. In the present case, no such intention is being attributed to the petitioner. The petitioner had clearly erred in not having the earlier Conveyance Deed registered and therefore, did not acquire good title in the Unit in absence of such registration. It is for this reason that the subsequent Conveyance Deed was required to be executed between the petitioner and the DDA. By this time, the rates of the Stamp Duty had been reduced by the Government of NCT of Delhi and therefore, the petitioner paid the lesser amount of the Stamp Duty. The petitioner, however, is also seeking refund of the lesser amount of the Stamp Duty from the respondent no. 1 thereby not intending to make any gain in the transaction.

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

mandate of Article 265 of the Constitution of India (***Piyush Aggarwal & Anr. vs. Govt of NCT. Delhi & Ors.***, 2005(81)DRJ, 186).

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.

33. In reaching the above conclusion, reliance is also to be placed on the Circular dated 03.01.2003 of the respondent no. 2 which directed the Collector of Stamps to refund the Stamp Duty to the allottees paid on the previous instrument by placing reliance on Section 49(d)(6) of the Act. Though it is true that the executive orders cannot override, alter or amend the statutory rules and regulations, in my opinion, no such effect was sought to be achieved by the said Circular. The Circular merely prescribes that instead of revalidating the previous document so as to make it valid for the purpose of registration, the DDA must insist with the allottee for execution of fresh instrument, and in such cases refund of Stamp Duty on the previous instrument shall be made in accordance with Section 49(d)(6) of the Act. The respondent itself having required the DDA and the allottees to execute fresh documents, cannot now be allowed to wriggle out all its obligation to refund the Stamp Duty on the previous document on technical pleas.

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.

35. In view of the above, the Impugned Order cannot be sustained and is accordingly set aside. Consequently the respondents are directed to refund the amount of Rs. 2,14,525/- to the petitioner within a period of eight weeks from the date of this judgment alongwith interest at the rate of 6% per annum with effect from 16.04.2013, the date of the first order of rejection of the refund by the respondent no. 1, till the date of payment.

36. The petition is allowed in the above terms. There shall be no order as to cost.

NAVIN CHAWLA, J

JANUARY 16, 2020/*rv*