IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4933/2019.

M/s. Gimatex Industries Pvt. Ltd. ... Petitioner.

-VERSUS-

1.State of Maharashtra
and others. … Respondents.

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Shri M.G. Bhangde, Senior Advocate with Shri R.M. Bhangde, Advocate for the Petitioner.
Ms. K.Deshpande, Assistant Government Pleader for the Respondent Nos.1 to 5.
Shri S.N. Kumar, Advocate for the Respondent No.6.

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CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.
DATE : 4 FEBRUARY 2021.

P.C.

Notice is issued in this Petition for final disposal on 16 July 2019. Accordingly, the matter is taken up for final disposal.

2. The Petitioner is a Private Limited Company which has

set up a Textile Unit in Hinganghat city. As per the Package Scheme of Incentives – 2013 issued by the Government of Maharashtra, through Industries, Energy and Labour Department, by Government Resolution dated 1 March 2013, the Petitioners' unit's location falls in 'D+' shown in the relevant clause.

3. The Petitioner for investment had borrowed money from various consortium banks, Bank of Baroda being the Lead Bank. The Petitioner had invested Rs.211.40 Crores, which by subsequent loan as availed through different instruments totalling up to Rs.470 Crores. The Petitioner was desirous of borrowing an additional amount, and for that purpose, a Deed had to be executed.

4. As per the Policy of 2013, various incentives were offered by the State of Maharashtra for promotion of Industries, more particularly in that areas where such industrial and desirable and social growth development was found necessary, out of various benefits, the benefit which is subject of this petition is a waiver of stamp duty. Under the Policy, the State Government had offered stamp duty exemption for the units in D+ Taluq during the investment period. Clause [6] of the Policy reads thus -

> "*6. <u>YEARLY CAP FOR THE INCENTIVES.</u>*
>
> *6.1. The amount of incentives to be*

disbursed to the MSMEs and LSI Units under year will be limited to the total quantum of incentives divided by the number of years as per the applicable Eligibility period with the provision of carrying forward the differential between the actual sanctioned amount for a given year and the yearly disbursement limit.

6.2. *For Mega Projects/Ultra Mega Projects, if the E.C. Period is more than 10 years, the yearly limit on disbursement amount shall be equal to 1/10 of the total quantum of incentives or Industrial Promotion Subsidy sanctioned for that year whichever is less. The Carry forward principle will be applicable. The balance quantum of incentives will be available after 10 years with yearly cap as above. Proportionate quantum of incentives will be calculated for a part of the year.*

Example 1 *:If the unit is eligible for the total quantum of Rs.1000 and the E.C. period is 10 years, then actual incentives disbursed to such unit, shall not exceed Rs.100 [1000/10] in a given year even though the amount of total incentives sanctioned for that year is more than Rs.100. The difference [yearly sanctioned amount minus yearly disbursement limit] can be*

> *carried forwarded for the Subsequent years of the E.C. period, such that the actual disbursement of incentives is not more than Rs.100 in any year.*
>
> ***Example 2****: If the unit is eligible for the total quantum of Rs.1000 and the E.C. period is 10 years, then actual incentives disbursed to such unit, shall not exceed Rs.100 [1000/10] or the incentive sanctioned [say Rs.70] for that year whichever is less [i.e. Rs.70]. The difference [i.e. Rs.30] can be carried forwarded for the further E.C. period. In the next year, if the total incentives sanctioned are Rs.140, then the unit will be eligible for disbursement of Rs.100 [i.e. yearly maximum disbursement limit] and Rs.30 towards the carried forward amount."*

5. Under Clause [6], the Petitioner was given benefit regarding one document executed by the Petitioner. For the subsequent documents, such benefits were not extended because of an Order issued under Section 9 of the *Maharashtra Stamp Act (the Stamp Act)*, on 14 May 2013. By this petition, the Petitioner has challenged the imposition of stamp duty on the subsequent documents and rejection of the application and an appeal filed before the Appellate Authority.

6. We have heard Shri M.G. Bhangde, Senior Advocate with Shri R.M. Bhangde, Advocate for the Petitioner, Ms. K.Deshpande, Assistant Government Pleader for the Respondent Nos.1 to 5 and Shri S.N. Kumar, Advocate for the Respondent No.6.

7. The State of Maharashtra modified the Package Incentive Scheme on 16 October 2017 and superseded the Order dated 14 May 2013. After this Order was passed, the Petitioner's appeal under Section 53(1A) of the Stamp Act was taken up for consideration by the Appellate Authority, and the same was dismissed on 9 April 2019.

8. The learned Senior Advocate for the Petitioner contended that having once declared a Package Scheme to promote the industrial growth pursuant to the Cabinet's decision it could not have been restricted and taken away by a resolution passed by one department of the State Government. He has placed reliance upon a decision of the Supreme Court in case of *State of Bihar and others vs. Suprabhat Steel Ltd and others*[1]. The learned Senior Advocate further submits that in any case by order dated 16 October 2017, the resolution dated 14 May 2015 which is a foundation for denying the benefit of stamp duty waiver for subsequent instruments, has been recalled. The learned Senior Advocate submits that therefore, it be declared that the Petitioners are entitled to 100% remission pursuant to

1 (1999) 1 SCC 31

the orders dated 16 October 2017 and the orders passed by the Authorities under the Stamps Act need to be set aside.

9. It is not necessary to dwell further on this controversy because of the stand taken in affidavit in reply filed by the Respondent No.2 through Joint Director of Industries, Nagpur, wherein in paragraph No.10 the deponent has stated as under :

> "*10. It is submitted that, as per PSI 2013 the Government Resolution dated 01.04.2013, the respondent Nos.1 and 3 has no intentions to restrict stamp duty exemption to only first instrument executed by the eligible investor under the said scheme during its investment period. This fact is confirmed by the order dated 16.10.2017 issued by the respondent No.2 suppressing its order dated 14.05.2013 and 04.09.2013.*"

The learned Assistant Government Pleader also reiterates that the restriction placed on only one instrument being exempted for stamp duty regarding stamp duty waiver under the Package Policy of 2013, does not survive any more. The learned Assistant Government Pleader submits that the quasi judicial authority under the Stamp Act, more particularly the Appellate Authority has already passed an order in that regard. Therefore, it is not for the executive authorities to recall this order.

10. We have perused the order passed by the Appellate

Authority. The Appellate Authority has decided the appeal on 9 April 2019. The decision is based on the government order dated 14 May 2013. There is no reference to the Order dated 16 October 2017, which has superseded the Government Order dated 14 May 2013. The Appellate Order is therefore based on a legal premise which has undergone a substantive change. That being the position, the order passed by the Appellate Authority cannot be sustained.

11. Considering that the Appeal under Section 53(1A) of the Stamps Act is a statutory appeal, it will be appropriate to restore the appeal to the Appellate Authority so the Appellate Authority has a benefit of examining the order dated 16 October 2017 before deciding the appeal filed by the Petitioner. The learned Assistant Government Pleader also states that this would be an appropriate course of action in view of the affidavit in reply filed.

12. In the circumstances, the Writ Petition is disposed of by quashing and setting aside the orders passed by the Inspector General of Registration and Deputy Controller of Stamps on 9 April 2019, and restoring the Appeal No.362/2017 filed by the Petitioner. The Appellate Authority will decide sthe Appeal of the Petitioner within 8 weeks from the date the writ of this Court reaches it, in the light of what is observed above, more particularly, the effect of the government order dated 16 October

2017. Needless to state if the Appeal is decided against the Petitioner, the other legal grounds raised by the Petitioner in this Petition are kept open.

13. The Writ Petition is accordingly disposed in above terms.

(ANIL S. KILOR, J) (NITIN JAMDAR, J)

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