**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.9046 of 2021(O&M)
Date of Decision:04.05.2021**

M/s Bluecraft Agro Private Limited

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Suresh K. Jindal, Advocate
for the petitioner.**

ANIL KSHETARPAL, J.

1. Through this writ petition, the petitioner has prayed for the following substantive reliefs:-

> *"(ii) Issue a writ of certiorari thereby quashing the impugned memo dated 11.06.2019-Annexure P-12 issued by respondent no.3-Sub Divisional Officer (Civil)-cum-Collector, Jagadhri;*
>
> *(iii) Issue a writ of mandamus directing the respondents to refund the stamp duty of Rs.7,30,73,460/- purchased by the petitioner from the Government Treasury on 23.02.2018 and for which, E-Stamp paper was issued on 26.02.2018 along with interest as may be assessed by this Hon'ble Court."*

2. The petitioner-company claims that it was to get scribed a sale deed in order to purchase of 54 Bighas and 7 Biswas of land along with the constructed area situated at village Mamida, District Yamuna Nagar. For that purpose, the petitioner-company is alleged to have purchased Non-Judicial E-Stamp papers worth Rs.7,30,73,460/- from the Government Treasury on 26.02.2018. In paragraph 5 of the writ petition, it has pleaded as under:-

> "*5. That after purchase of the E-Stamp paper on 26.02.2018, it transpired to the petitioner that as per the Circular of the Haryana Government regarding fixation of collector rates for the year 2017-18 (w.e.f 15.11.2017), the collector rate of the land in question was Rs.12,000/- per square yard for factory land instead of Rs.16,500/-. In this way, due to inadvertent wrong calculation, stamp duty of Rs.1,78,33,594/- was paid in excess. In other words, the stamp duty payable was Rs.5,52,39,866/-, whereas stamp duty paid was Rs.7,30,73,460/- and excess stamp duty paid was Rs.1,78,33,594/-.*"

3. The petitioner further claims that it applied on 01.03.2018 for refund of the excess stamp duty deposited i.e. Rs.1,78,33,594/- to the Sub-Registrar, Jagadhri. However, the application was returned with an endorsement to take up the matter with the Collector, Yamuna Nagar. Thereafter, the petitioner claims that it submitted an application to the Collector on 27.03.2018 for refund of the alleged excess stamp duty. Thereafter, it purchased a fresh set of E-Stamp papers of Rs.5,46,81,000/- and two sale deeds were got scribed and registered. The petitioner is stated to have applied for refund of the stamp duty of Rs.7,30,73,460/- under Section 50 and 52 of the Indian Stamp Act, 1899 which is stated to have been dismissed by the Collector-cum-Sub Divisional Officer (Civil) Jagadhri, on 11.06.2019 on the ground that the application was filed beyond the time prescribed. The petitioner claims that on 01.03.2018 it had immediately applied for refund to the Sub-registrar, Jagadhri and therefore the order passed is wrong.

4. The petitioner further claims that it had submitted separate applications to the Deputy Commissioner-cum-Collector & the Chief Secretary, Haryana, however, there is no response. Hence, the petitioner has prayed for the reliefs noticed above.

5. I have heard learned counsel for the petitioner at length and with his able assistance perused the paper book.

6. The petitioner-company has not disclosed the amount of sale consideration. From the reading of paragraph 5 of the writ petition, it is apparent that the petitioner-company got the sale deeds registered on the e-stamp papers of Rs.5,52,39,866/- as it subsequently came to know of the collector rate. In the considered opinion of this Bench, the amount of stamp duty is to be calculated on the amount of sale consideration and not on the collector rate. The collector rates are notified by the Government only for the purpose of guidance of the revenue and registration authorities. The collector rates do not determine the stamp duty payable.

7. Still further, the petitioner applied for refund of the amount under Section 50 and 52 of the Indian Stamp Act, 1899 wherein the period of limitation for filing an application under Section 49 is provided. Section 49 deals with the eventuality for refund of the spoiled stamps. Section 49,

50 and 52 of the Indian Stamp Act, 1899 are extracted as under:-

> ***"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 within 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: —*
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> *(a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person:*
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> *(b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto:*
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> *(c) in the case of bills of exchange payable otherwise than on demand or promissory notes—*
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> *(1) the stamp on any such bill of exchange signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatever or delivered out of his hands for any purpose other than by way of tender for acceptance: provided that the paper on which any such stamp is impressed, does not bear any signature intended as or for the acceptance of any bill of exchange to be afterwards written thereon:*
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> *(2) the stamp on any promissory note signed by or on behalf of the maker which has not been made use of in any manner whatever or delivered out of his hands:*
>
> *(3) the stamp used or intended to be used for any such bill of exchange or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange may have been presented for acceptance or accepted or endorsed,*

or, being a promissory note, may have been delivered to the payee: provided that another completed and duly stamped bill of exchange or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, or note;

(d) the stamp used for an instrument executed by any party thereto which— (1) has been afterwards found to be absolutely void in law from the beginning:

(2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended:

(3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed:

(4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended:

(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose:

(6) becomes 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:

(7) is deficient in value and the transaction intended to be thereby effected has been effected by some other instrument between the same parties and bearing a stamp of not less value:

(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: Provided that, in the case of an executed instrument, no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled.

Explanation.—The certificate of the Collector under section 32 that the full duty with which an instrument is chargeable, has been paid is an impressed stamp within the meaning of this section.

***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.*
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> ***52. Allowance for misused stamps**. —(a) When any person has inadvertently used for an instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty; or*
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> *(b) when any stamp used for an instrument has been inadvertently rendered useless under section 15, owing to such instrument having been written in contravention of the provisions of section 13;*
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> *the Collector may, on application made 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, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless."*

8. On careful reading of Section 49, 50 and 52, it is apparent that in the facts of the present case, the aforesaid provisions have no application to the facts of the present case. Learned counsel representing the petitioner-company submits that Section 54 of the Indian Stamp Act, 1899 is applicable. Be that as it may.

9. It may be noted here that in the facts of the present case, the Collector is required to adjudicate as to what is the appropriate amount of stamp duty payable. On reading of Annexure P-3, it becomes apparent that the total value was calculated at Rs.1,04,39,06,572/-.

10. In these circumstances, it becomes incumbent for the Collector-

cum-Deputy Commissioner to examine the matter. Section 31 of the Stamp Act obligates the Collector of the district to adjudicate whether a instrument has been appropriately stamped or not. Still further, the Haryana Government had added Section 47-A of the Stamp Act vide Haryana Act No.37 of 1973. Sub-section 3 of Section 47-A also authorizes the Collector to suo-moto exercise the jurisdiction and adjudicate, what is the appropriate amount of stamp duty payable on an instrument. The limitation for the exercise of such power is within 3 years from the date of registration of any instrument.

11. Keeping in view the aforesaid facts, the present petition is disposed of with a direction to the Collector-cum-Deputy Commissioner, Yamuna Nagar to initiate proceedings and proceed to adjudicate upon the appropriate amount of stamp duty with a period of 9 months from today by passing a speaking order after granting opportunity to lead evidence, if any.

12. With these observations, the writ petition is disposed of.

04th May, 2021 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO