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

Date of decision: 17th February, 2021

+ **W.P.(C) 2117/2021 & CM APPL. 6203/2021**

SBEC SUGAR LIMITED

..... Petitioner

Through: Mr. Piyush Sharma, Advocate.
versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents

Through: Mr. Shadan Farasat, Advocate for
GNCTD.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode (physical and virtual hearing).
2. The present petition has been filed by the Petitioner-Company (*hereinafter*, 'Company') seeking refund of the e-registration fee which was deposited by the Company. The said refund has not been allowed by the Respondent, despite repeated representations.
3. The background of the case is that the Company had purchased an e-stamp for the purposes of registering a mortgage deed in respect of agricultural land situated at Satbari Village, New Delhi. The amount deposited on 10th April 2019, was Rs.91,00,136/-, vide e-registration fee No.DL0910271904567. When the Company went to register the said document, the Company was informed that the same had a fixed stamp duty and hence, the e-registration stamp remained unused. The Company, thereafter, repeatedly approached the office of Respondent No.3 for seeking a refund.

4. Mr. Sharma, Id. Counsel appearing for the Petitioner-Company, submits that there is no dispute as to the fact that the stamp duty was, in fact, deposited by the Petitioner. In fact, the rejection of the refund on 14th September, 2020 is on the ground that as per the legal opinion of the DC (HQ), the Competent Authority, is not entitled to process the refund.

5. Mr. Shadan Farasat, Id. Counsel appearing for GNCTD submits that since the Department was under the misconception that this is not unutilised stamp duty, it refused to refund the said amount.

6. Heard Id. Counsels for the parties. There can be no doubt that even if the stamp duty is paid in an electronic form i.e., as e-registration or as e-stamp duty, the same would be stamp duty under the Indian Stamp Act, 1899 (*hereinafter, 'Act'*). Historically, the introduction of e-stamp duty or e-registration was to curb misuse of physical stamp papers. E-stamps are issued by the Stock Holding Corporation of India Ltd (*'SHCIL'*), which is duly authorised by the Govt. of India for the said purpose. SHCIL in turn appoints Authorised Collection Centres who issue certificates to the customers. The Punjab & Haryana High Court has, in ***Dharmender Sharma Vs. UOI & Ors. [LPA No. 1308/2012, decided on 21st March, 2013]*** considered the modalities of e-stamping and observed:

“39. In this background, let us understand the agency business of e-stamping assigned to the respondent corporation. E-stamping of property is an advance method of putting stamps on the documents in contrast with the conventional stamping. Such stamp papers are obtained from the treasury by depositing the amount keeping in view the denomination of the stamp paper which is required on a particular document to be executed. The stamp papers upto the particular values are sold through stamp vendors as well. It is a matter

of common knowledge that few years ago a scam relating to such stamp papers was unearthed. Finding that huge quantity of forged stamp papers was in circulation, it is in order to curb this menace that e-stamping is evolved as an alternative mode of stamping. Thus, e-Stamping is the 'Revenue's latest On-line and file-service in 'Revenue's On-line Services' (ROS). Any person registered to use the ROS can use e-stamping to file stamp duty returns electronically by making on-line payments to Revenue and to receive a stamping certificate. The methodology adopted is to submit LPA No. 1308 of 2012 an electronic stamping application via the Internet instead of presenting the original instrument to the Stamp Office. After payment of stamp duty, a stamp certificate is issued and the instrument is stamped. It is this job which is outsourced to the respondent-corporation by appointing it as an Agent.”

7. Similarly the High Court of Gujarat in ***Manish Jitendrakumar Shah v. State of Gujarat [R/Special Civil Application No.16221/2019, decided on 24th July, 2020]***, while considering a challenge to the discontinuation of sale of physical non-judicial stamp paper, observed:

“49.1. Law is not static. It is dynamic in nature in character and in spirit. It has to keep changing with passage of time. Law has to be evolved in pace with the changing times, advancement of technology, by making it more secure, transparent and user-friendly specially in fiscal matters. The above concept is to be applied even more liberally. The world is now heading towards paperless transactions, using technology to its best by online transactions. Physical movement has to be avoided as far as possible and so many other reasons which ultimately benefit the public at large. Today is the world of plastic money, online banking, transactions through RTGS or NEFT mode. Similarly, in order to check and control the sale and purchase of

stamp papers, initially franking was introduced in 1999 in the State of Gujarat and thereafter e-stamping and e-payment of stamp duty started in 2007 and in 2014 and 2017. The same has continued without any challenge. Even today there is no challenge to the same. Now, once the e-stamping and e-payment of stamp duty is available and is smoothly functioning, the State Government has taken a decision by introducing Rule 8A to stop sale of physical stamp papers of all denominations except those protected under the 1899 Act and 1958 Act.”

“46.10 E-stamping is operational in 21 states across the country. In the States of Delhi and Karnataka physical judicial stamp papers have been discontinued.”

Thus, the validity of E-stamps and E-registration is no longer in doubt.

8. Insofar as the registration of the mortgage deed or any other deed is concerned, the stamp duty payable is mentioned in the schedule to the Act. If, for any reason, any stamp duty is not utilised by the purchaser, Section 54 of the Act permits refund of the stamp duty. The said provision has been considered in repeated orders of this Court, including in ***Meenakshi Arora v. GNCTD & Ors. [W.P.(C) 6367/2020, decided on 11th November, 2020]*** and ***Kewal Kishore v. Assistant Director MIG(H) & Anr [W.P. (C) 5242/2020, decided on 25th November, 2020]***.

9. In ***Meenakshi Arora (supra)***, a ld. Single Judge of this Court had clearly directed that whenever refund of stamp duty is sought for, the same ought to be processed and the amount paid ought to be refunded within two months. The order dated 11th November, 2020 is set out below:

*“1. This hearing has been held by video conferencing.
2. This petition has been filed by the petitioner praying for the following reliefs:*

“(a) Issue an order/direction/command/writ in the nature of Writ of Mandamus directing Respondent No.2 to refund a sum of Rs.40,00,000/- against unutilized E-Stamp No. INDL70453778245940R dated 09.04.2019 along with interest in favour of the petitioner;

(b) Issue an order/direction/command/writ in the nature of Writ of Mandamus directing Respondent No.3 to refund a sum of Rs.10,00,000/- against the E-Registration Fee along with interest as no document was submitted for registration.”

3. During the pendency of the present petition, the refund has been made to the petitioner and therefore, the prayer in that regard stands satisfied.

4. However, it is noticed that the application seeking refund of the e- stamp was made by the petitioner on 18.07.2019 and in spite of a legal notice having been issued, was not processed. It was only on 15.07.2020 that the Memorandum of Refund was issued to the petitioner, and only upon the filing of the present petition the refund was actually made.

5. Though, the learned counsel for the respondent has submitted that due to the outbreak of Covid-19 pandemic, there was some delay in processing the claim of the petitioner, however, this cannot explain the delay between July, 2019 to March, 2020, which is almost a period of eight months. The Stamp Act creates a right in favour of the applicant to seek such refund once the application is made in terms thereof.

6. Accordingly, it is directed that the respondents must ensure that such applications are considered expeditiously and an endeavour should be made that the same are decided within a period of two months of their receipt. Decision on such applications must be

followed with orders either refunding or refusing such refund in accordance with the law.

7. This general direction is being passed as the learned counsel for the petitioner has submitted that similar grievance is being faced by many other applicants, who may not have not approached this Court only for financial constraints.

8. The petition is disposed of with the above directions.

9. Copy of this order be circulated by the respondent to the concerned officers for ensuring compliance”

A similar view has been taken by this Court in ***Kewal Kishore (supra)***.

10. Considering the overall facts and circumstances of this case, there need not be any misconception in the mind of the Department that if any stamp duty, including e-stamp, or any e-registration fee is not utilised for the purposes of registration of any document/instrument/conveyance deed, the refund would be liable to be made to the purchaser in accordance with Section 54 of the Act. The same shall be done within a period of two months, as directed in ***Meenakshi Arora (supra)***.

11. In this case, the application for refund was made way back on 31st July, 2019. A considerable period had already passed. Accordingly, the e-registration fee is directed to be refunded to the Petitioner by 10th March 2021.

12. With these observations, the present petition, along with all pending applications, is disposed of.

**PRATHIBA M. SINGH
JUDGE**

FEBRUARY 17, 2021/dj/T

(corrected and released on 23rd February, 2021)