IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6079 OF 2021

Athani Sugars Limited through
Executive Director and CFO
Shri. Yogesh Patil ...Petitioner
V/s.
State of Maharashtra and Ors. ...Respondents

Mr. G. S. Godbole a/w. Mr. Sumit S. Kothari, for the Petitioner.
Mr. S. H. Kankal, AGP for the Respondent / State.

CORAM : C.V. BHADANG, J.
DATE : 20 SEPTEMBER 2022

P.C.

. Rule. Rule made returnable forthwith. Learned AGP waives service for the Respondent / State. Heard finally by consent of the parties.

2. By this petition, the Petitioner is challenging the order dated 5 March 2020 passed by the Chief Controlling Revenue Authority, Maharashtra State, Pune ('the Appellate Authority'), thereby rejecting the appeal filed by the Petitioner under Section 53 (1A) of the Maharashtra Stamps Act, 1958 ('the said Act'). By the impugned judgment, the Appellate Authority has confirmed the order dated 2 August 2019 and 16 August 2019 passed by Respondent – Collector of Stamps, directing the Petitioner to

deposit the deficit stamp duty of Rs.3,00,23,300/- alongwith interest at the rate of 2% per month as per Section 39 of the said Act on the two sale certificates dated 25 October 2016.

3. The brief facts are that the Petitioner had participated in a auction of assets of *Indira Gandhi Bhartiya Mahila Vikas Sahakari Sakhar Karkhana* (Karkhana), conducted by Industrial Development Bank of India (IDBI Bank), of the mortgaged property, under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SRFAESI Act). The Petitioner emerged as a successful bidder for Rs.93,00,41,807/-.

4. It appears that the Karkhana filed an interim application before the Debt Recovery Tribunal (DRT) for permitting M/s. Venkatesh Suppliers to participate in the bid. The DRT by an order dated 16 September 2016 directed rebidding of the assets. The Petitioner challenged the same before this Court in Writ Petition No.10743/2016 which was allowed on 29 September 2016 and the order for rebidding was set aside.

5. On 17 October 2016, the offer / bid of the Petitioner was confirmed. On 25 October 2016, the Authorised Officer of IDBI Bank issued two sale certificates, one in respect of immovable property and the other in respect of movable property of the said Karkhana.

6. It further appears that one M/s. Dalamiya Bharat Sugars Limited filed SLP No.32043/2016 before the Supreme Court and on 28 October 2016, the Supreme Court had directed to maintain status-quo. The SLP was eventually dismissed on 31 July 2017 and the interim order came to be vacated.

7. The State of Maharashtra by a Government order dated 4 September 2013 had granted remission in the stamp duty chargeable on the first instrument of any project / industry / unit for the investment period from 1 April 2013 to 31 March 2018 which was known as 'Package Scheme of Incentives – 2013'. As per said scheme, the project / industry / unit which was certified by the implementing agency specified under the said scheme or any other officer authorised in his behalf was competent to issue the certificate of exemption / remission of the stamp duty.

8. It is a matter of record that the Additional Director of Industries, which was the implementing agency issued a certificate of exemption, in favour of the Petitioner on 18 September 2017.

9. On 21 December 2017, the Petitioner submitted the two sale certificates, which are instruments of transfer, as per Article 25 of the Stamp Act, with the Sub-Registrar Bhudhargarh for registration. The Sub-Registrar had requested the Joint Registrar to initiate an inquiry under Section 32-A of the Stamp Act.

Eventually, the Collector of Stamps by orders dated 2 August 2019 and 16 August 2019 had levied the deficit stamp duty as aforesaid which order has been confirmed in appeal by the Appellate Authority. Hence, this petition.

10. I have heard Mr. Godbole, the learned counsel for the Petitioner and Mr. Kankal, learned AGP for the Respondent – State.

11. It is submitted by the learned counsel for the Petitioner that the Authorities below have refused to grant the remission / exemption only on the ground that the exemption certificate was obtained by the Petitioner on 18 September 2017 which is subsequent to the issuance of the two sale certificates on 25 October 2016. He therefore submitted that the only reason for which the Petitioner has not been granted remission / exemption is that on the date of the grant of sale certificates, the Petitioner was not holding the exemption certificates. The learned counsel submitted that once as per the scheme even the sale certificate in respect of a purchase at an auction was eligible for such exemption / remission, a party cannot be expected to have the exemption certificate on the date of the sale certificate as the acceptance of the bid is a matter contingent upon the party emerging as a successful bidder. It is submitted that this was not a case where there was a voluntary sale / purchase between the parties. The learned counsel submitted that although in the reply,

the order is also sought to be supported on the ground that this was not the new or the first project, the order cannot be allowed to be supplemented by affidavit, for which purpose, reliance is placed on the decision of the Supreme Court in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji* [1]. It is submitted that the Petitioner cannot be expected to perform something which is impossible, for which purpose, reliance is placed on the decision of the Supreme Court in State of *Madhya Pradesh Vs. Narmada Bachao Andolan and Anr.* [2] and *Dipak Babaria and Anr. Vs. State of Gujarat and Ors.* [3] He therefore submitted that the petition be allowed.

12. The learned AGP placing reliance on Section 17 of the Stamp Act, has submitted that the stamp duty is payable at the time of execution of the document or immediately thereafter on the next working day following the day of execution. He therefore submitted that the sale certificate which is admittedly chargeable to the stamp duty, was required to be stamped at the time of execution or on the next working day. He submitted that the exemption certificate in this case was obtained close to one year after the issuance of the sale certificate and therefore, the authorities below have rightly concluded that the Petitioner was not entitled to the exemption / remission. The learned AGP however, in all fairness, did not dispute that the only reason for

1 *AIR 1952 SC 16*

2 *(2011) 7 SCC 639*

3 *(2014) 3 SCC 502*

refusing to extend the benefit of exemption / remission is that the exemption certificate was obtained after the grant of the sale certificate. Learned AGP has also placed reliance on Explanation 2 as set out in the Government order dated 4 September 2013 in order to submit that it is only eligible project / industry / units which are entitled to such exemption during the investment period.

13. I have carefully considered the rival circumstances and the submissions made.

14. The material facts are not in dispute, apart from being matters of record. It is undisputed that the Petitioner emerged as a successful bidder for purchase of the assets of the *Karkhana* in a public auction conducted by IDBI Bank for Rs.93,00,41,807/- and two sale certificates were issued to the Petitioner on 25 October 2016, one each in respect of the immovable and movable properties of the *Karkhana*. It is also a matter of record that the DRT had directed rebidding which order was set aside by this Court. The Supreme Court in the SLP filed by M/s. Dalamiya Bharat Sugars Limited had directed maintenance of status-quo on 28 October 2016 which continued upto 31 July 2017 when the SLP was dismissed and the interim order was vacated. Thus, on account of these intervening circumstances, the Petitioner could not have taken steps for submission of the sale certificates for registration. Column No.4 of the schedule appended to the

Government order dated 4 September 2013 makes it clear that a sale certificate is one of the types of instruments which is entitled to exemption / remission. Column No.4 of the schedule specifically mentions sale certificate as type of instrument which is otherwise chargeable to stamp duty under Article 16 of the Stamp Act. In my considered view, the learned counsel for the Petitioner is right that unlike the other modes of transfer such as sale or lease entered into by the parties voluntarily in a case of auction purchase, a party may not know with any amount of certainty that the bid / offer would be accepted. Thus, at least in respect of an instrument of sale certificate, consequent upon a party emerging as a successful bidder, it cannot be insisted that the party should have exemption certificate on the date of the obtaining of the sale certificate. Such a condition has also not been pointed out in the Government order dated 4 September 2013 specifying the package scheme of incentives 2013. The learned counsel for the Petitioner is right that the party cannot be expected to do something which is impossible as unless and until the party emerges as a successful bidder, which is a fortuitous / contingent circumstance, the party could not have any occasion to obtain the exemption certificate. It is trite that the exemption certificate to be granted by the implementing agency-in the present case-the Additional Director of Industries, would require a particular instrument / document before issuance of such certificate. Thus, in my humble view, the authorities below were not justified in refusing to grant exemption / remission on the ground that the Petitioner was not having exemption certificate as on the date of sale certificates.

15. Reliance placed by the learned AGP on Explanation 2, to my mind, is misplaced. Explanation 1 and 2 which are relevant for the purpose read thus-

> *Explanation -*
>
> *(1) For this purpose project / industry / unit means which is certified by the implementing Agency specified under "Package Scheme of Incentives – 2013" or any other officer authorised in this behalf.*
>
> *(2) Eligible project / industry / units will be eligible for stamp duty exemption during their investment period.*

16. All that Explanation 2 provides is that eligible project / industry / units shall be eligible for stamp duty exempt during their investment period which is the period from 1 April 2013 to 31 March 2018. On this aspect, there is no dispute. It is thus difficult to see as to how the Explanation 2 can come to the aid of the Respondents.

17. Section 17 also cannot come to the aid of the Respondents. It is true that Section 17 provides that the stamp duty would be payable on the date of the execution of the instrument or on the

next working day following such execution. However, once the Petitioner has been found to be entitled to the exemption / remission, as per the package scheme of incentives 2013, on the strength of the certificate issued by the implementing agency, said exemption / remission ought to relate back to the date of execution of the document particularly, when the instrument / document is in the nature of a sale certificate on purchase of assets in a public auction. Except the said reason, there are no other reasons set out by the authorities for refusing to grant exemption / remission.

18. In that view of the matter, I find that the Petitioner has to succeed.

19. In such circumstances, the petition is allowed. The impugned orders are hereby set aside directing the Respondent No.4 – Sub-Registrar Budhargarh to register the sale certificate dated 25 October 2016 within a period of six weeks' from today.

Rule is made absolute in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.