IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.12.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.13094 of 2015 &
MP.Nos.1 & 2 of 2015

N.V.Paper Products Pvt. Ltd.
Rep. by its Managing Director, Uttam Chand S.Ranka,
No.2-B, Sidco Industrial Estate,
Ambattur, Chennai – 600 098. … Petitioner

Vs

1.The District Revenue Officer (Stamps),
O/o. District Revenue Officer (Stamps),
Collectorate, 5th Floor, M.Singaravelar Maligai,
No.32, Rajaji Road, Chennai – 600 001.

2.The Sub-Registrar, Ambattur,
Chennai – 600 053.

3.Tamil Nadu Small Industries Development Corporation Ltd.,
Rep. by its Branch Manager,
Industrial Estate, Ambattur, Chennai – 600 058. … Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order made in Na.Ka.No.8001/13/AH/2010 dated 29.11.2014 issued by the 1st respondent under Rule 4 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 in Form No.I and quash the same and forbear the respondents from demanding any excess stamp duty from the petitioner in respect of sale deed dated 31.03.2012 registered as document No.7329 of 2012 on the file of the 2nd respondent.

For Petitioner : Mr.S.T.Raja
For Om Sai Ram Associates

For Respondents : Mr.B.Vijay
Additional Government Pleader – R1 & R2

Mr.B.Manoharan – R3

ORDER

The petitioner is a company that had entered into a transaction of purchase of property from the third respondent, that is, the Tamil Nadu Small Industries Development Corporation Limited (in short 'TNSIDC') on 30.03.2012.

2. The sale was registered and immediately thereafter proceedings in form No.I of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 (in short '1968 Rules') came to be issued to the petitioner by the District Revenue Officer (Stamps) (in short 'DRO'/'R1'), calling upon it to remit a sum of Rs.22,96,740/- as deficit stamp duty.

3. The defence of the petitioner was that the transaction had been undertaken under orders of the State in G.O.Ms.No.866 dated 28.07.1987 and thus, the valuation of the plot made under G.O. is not liable to question by the authority. The distinction made was on the score that the vendor in question was SIDCO and not a private individual. Nothing further transpired on this account and on 17.01.2013, the document was also released.

4. Despite a direction by the District Revenue Officer (Stamps)/R1 to release the document on 17.01.2013, the document was not released, necessitating the petitioner to seek and obtain from this Court on 29.04.2015, a direction that the document be released, subject to the result of this writ petition. It is, hence, that the document has come to be released, by virtue of an order passed by this Court.

1. Before me, the contentions of the petitioner are that in issuing the subsequent impugned form-I, dated 29.11.2014, the respondent has completely lost sight of the fact that the vendor in this case is the State and hence there could be no allegation levelled as against any variation in sale consideration or consequential stamp duty.

2.

6. Mr.S.T. Raja, learned counsel on behalf of Om Sai Ram Associates for the petitioner would also rely on two decisions of this Court, one in the case of *MBI Metal Alloys Private Limited Vs Inspector General of Registration* [2010 (1) TLNGA 385 (7)] and the other in the case of *Southern Ceramics Private Limited Vs Sub-Registrar, Registration Department* [2014 (5) Law Weekly 599].

7. This Court has, in the aforesaid matters, specifically taken note of transactions based upon, in the first case, a Government Order issued by the Commercial Tax Department on the basis of which sale consideration was fixed and secondly in regard to a transaction entered into by the petitioner with SIDCO, as in the present case, concluding that the sale and consequential values are deemed to be proper.

8. Relying on these two decisions, learned counsel for the petitioner would urge that the impugned demand has no legs to stand and that the transaction must be seen in proper perspective as being in satisfaction of all provisions of the Stamp and Registration enactments.

9. Per contra, Mr.Vijay, learned Additional Government Pleader would draw my attention to Article 23 of the first Schedule to the Stamp Act which proceeds on the basis that the stamp payable on conveyance of immovable property within designated areas, should be premised on the market value of the property which is a subject matter of conveyance.

10. It stands to reason he states, that the computation of market value should be undertaken as on the date of transaction itself and not on an anterior date. In this connection, he places reliance upon a judgment of the Hon'ble Apex Court in *State of Rajasthan & Others Vs Khandaka Jain Jewellers* [2008 (1) CTC 60] that has not been taken note of in the decisions relied upon by the petitioner.

11. Having heard the rival contentions advanced by the learned counsel for both sides, I am of the view that the challenge to the impugned form-I is not liable to be entertained. The mere fact that the transaction in question has been with SIDCO does not, in my considered view, exempt it from the application of Article 23 of the Stamp Act.

12. In fact, there are any number of instances where the sale consideration arrived at by the parties may be less than the market value such as distress sales or in cases where concessions are extended to new industries by the Government to name some. Even in such matters, it is incumbent for the parties to satisfy the registering authority that such reduction in sale consideration is for bonafide reasons and to provide justification for the same.

13. In the present case, the original Memorandum of Understanding dated 30.09.2004, which the petitioner states that it has entered into with SIDCO for purchase of industrial plot, is not available. In any event, it is not the case of the petitioner that the valuation of the land purchased was at a concession, and it is the elapse in time from the date of MoU to date of registration, that is, between 2004 and 2012, that most likely is the reason for variation in the valuation of the land and consequently the stamp duty applicable.

14. The Hon’ble Supreme Court in the case of *Khandaka Jain Jewellers* considered a similar matter where parties had litigated over the conveyance of an immovable property for several areas. Ultimately when the suit was decreed,

it was their contention that the original valuation of the property must be adopted for purposes of computation of stamp duty.

15. The Single and Division Benches of the High Court accepted the above submission which came to be reversed by the Hon'ble Supreme Court interpreting the expression 'execution' under Section 17 of the Rajasthan (Amendment) Stamp Duty Act as connoting current valuation, relevant to an instrument sought to be registered. The Court opined that the Stamp Act was in the nature of a revenue statute, and its application is not dependant on any contingency.

16. The conclusion of the Bench at paragraph 10, extracted below, is categoric to state that it is the valuation of the property at the time of execution of the document that must be taken into account in computing the stamp duty:

> *10. It may be mentioned that there is a difference between an agreement to sell and a sale. Stamp duty on a sale has to be assessed on the market value of the property at the time of the sale, and not at the time of the prior agreement to sell, nor at the time of filing of the suit. This is evident from section 17 of the Act. It is true that as per Section 3, the instrument is to be registered on the basis of the valuation disclosed therein. But Section 47-A of the Rajasthan (Amendment) Stamp Duty Act contemplates that in case it is found that properties are under valued then it is open for the Collector (Stamps) to assess the correct market value.*

Therefore, in the present case when the registering authority found that valuation of the property was not correct as mentioned in the instrument, it sent the document to the Collector for ascertaining the correct market value of the property. The expression "execution" read with Section 17 leaves no manner of doubt that the current valuation is to be seen when the instrument is sought to be registered. The Stamp Act is in the nature of a taxing statute, and a taxing statute is not dependant on any contingency. Since the word "execution" read with Section 17 clearly says that the instrument has to be seen at the time when it is sought to be registered and in that if it is found that the instrument has been undervalued then it is open for the registering authority to enquire into its correct market value. The learned single Judge as well as the Division Bench in the present case had taken into consideration that the agreement to sell was entered into but it was not executed. Therefore, the incumbent had to file a suit for seeking a decree for execution of the agreement and that took a long time. Therefore, the Courts below concluded that the valuation which was in the instrument should be taken into account. In our opinion this is not a correct approach. Even the valuation at the time of the decree is also not relevant. What is relevant in fact is the actual valuation of the property at the time of the sale. The crucial expression used in Section 17 is "at the time of execution". Therefore, the market value of the instrument has to be seen at the time of the execution of the sale deed, and not at the time when agreement to sale was entered into. An agreement to sell is not a sale. An agreement to sell becomes a sale after both the parties signed the sale deed. A taxing statute is not contingent on the inconvenience of the parties. It is needless to emphasize that a taxing statute has to be construed strictly and considerations of hardship or equity have no role to play in its construction. VISCOUNT SIMON quoted with approval a passage from ROWLATT, J. expressing the principle in the following words." In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax.

There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

17. If at all it is the case of the petitioner that the valuation arrived was at variance with the market value for certain bonafide reasons, the matter must be referred under Section 47-A of the Indian Stamp Act, 1899 for decision by the competent authority. Section 47-A read with Rule 4 of the 1968 Rules sets out the procedure to be followed in such matters, and allows for such objections to be raised by parties and entertained by the authorities concerned.

18. Following the procedure, the DRO has merely issued the impugned form-I calling for an explanation from the petitioner to justify the valuation of the property. There is a substantial difference between the sale consideration adopted by the petitioner, at Rs.66,000/- and the valuation arrived at by the authority, at Rs.2,87,76,000/-, and it is for the petitioner to appear before District Revenue Officer and place all material in support of its valuation.

19. With these observations, this writ petition is dismissed. Let the petitioner furnish a reply to the impugned notice, and if such reply is furnished within a period of four (4) weeks from date of receipt of copy of this order, the

petitioner shall be called upon, heard and an order passed, in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

kbs **06.12.2022**

Index : Yes
Speaking Order

To

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Dr.ANITA SUMANTH, J.

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