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WP.Nos.5864, 20043 & 30830 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

WP.Nos.5864, 20043 & 30830 of 2015 &

M.P.Nos.1, 1 & 1 of 2015

M/s.Design Creations [Mumbai] Pvt. Ltd.,
[now known as M/s.Leela Scottish Lace Pvt. Ltd.],
Leela Baug, Andheri-Kurla Road,
Andheri [East], Mumbai – 40059
Represented by its Directorate
Mr.Vinod Wadhmal Agnani

... Petitioner in
all WPs

Vs

1. The Chief Controlling Revenue Authority
& Inspector General of Registration, Tamil Nadu,
Mylapore, Chennai – 600 028.
2. The District Registrar [Administration],
Pattukottai.
3. Pattukottai Sub Registrar Joint – II,
Pattukottai, Tamil Nadu.
4. M/s.Leela Scottish Lace Pvt. Ltd.,
[now known as M/s.Leela Lace Holdings Pvt. Ltd.]
Leela Baug, Andheri-Kurla Road,
Andheri [East], Mumbai – 400 059.

... Respondents in
W.P.No.5084 of 2015



WP.Nos.5864, 20043 & 30830 of 2015

1. The Chief Controlling Revenue Authority
& Inspector General of Registration, Tamil Nadu,
Mylapore, Chennai – 600 028.
2. The District Registrar [Administration],
Pattukottai.
3. Pattukottai Sub Registrar Joint – II,
Pattukottai, Tamil Nadu.
4. M/s.Leela Scottish Lace Pvt. Ltd.,
[now known as M/s.Leela Lace Holdings Pvt. Ltd.]
Leela Baug, Andheri-Kurla Road,
Andheri [East], Mumbai – 400 059.
5. The Sub-Registrar,
Alandur, Chennai – 16.
6. The Sub-Registrar,
Ambattur, Chennai – 58.
7. The Sub-Registrar,
Konnur, Chennai – 23.

... Respondents in W.P.
.No.20043 of 2015

1. The Chief Controlling Revenue Authority
& Inspector General of Registration, Tamil Nadu,
Mylapore, Chennai – 600 028.
2. The District Registrar [Administration],
Pattukottai.
3. Pattukottai Sub Registrar Joint – II,
Pattukottai, Tamil Nadu.
4. M/s.Leela Scottish Lace Pvt. Ltd.,
[now known as M/s.Leela Lace Holdings Pvt. Ltd.]
Leela Baug, Andheri-Kurla Road,
Andheri [East], Mumbai – 400 059.



WP.Nos.5864, 20043 & 30830 of 2015

5. The Sub-Registrar,
Alandur, Chennai – 16.

... Respondents in
W.P.No.25084 of 2015

Prayer in W.P.No.5864 of 2015 :- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned Order dated 06.01.2015 bearing No.26371/P1/2014, passed by the first respondent and quash the same and consequently direct the respondents 1 to 3 to drop all further proceedings in respect of the Indenture dated 19.04.05, registered as Document No.432 of 2005 in the Sub-Registrar's Office [Joint II], Pattukottai.

Prayer in W.P.No.20043 of 2015 :- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a Writ of Mandamus directing the first, fifth, sixth and seventh respondents to permit admitting and registration of documents in respect of the properties that are the subject matter of the Indenture of transfer dated 19.04.2005, registered as Doc. No.432 of 2005 in the office of the third respondent without citing the pendency of proceedings under Section 33A of the Indian Stamp Act.

Prayer in W.P.No.30830 of 2015 :- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the records of the fifth respondent as contained in the impugned Order dated 12.09.2015 and quash the same.



WP.Nos.5864, 20043 & 30830 of 2015

For Petitioner : Mr.A.R.Karunakaran

For Respondents : Mr.J.Ravindran
Additional Advocate General
Asst by Mr.K.Tippu Sulthan
Government Advocate
- for R1 to R3 in W.P.No.5864 of 2015
for R1 to R3, R 5 to 7 in W.P.No.20043
of 2015
for R1 to R3 & R5 in W.P.No.30830
of 2015

No appearance – R4 in all WPs

COMMON ORDER

The Writ Petition in W.P.No.5864 of 2015 has been filed to quash the impugned Order dated 06.01.2015 bearing No.26371/P1/2014, passed by the first respondent and consequently direct the respondents 1 to 3 to drop all further proceedings in respect of the Indenture dated 19.04.05, registered as Document No.432 of 2005 in the Sub-Registrar's Office [Joint II], Pattukottai.

2. The Writ Petition in W.P.No.20043 of 2015 has been filed to direct the first, fifth, sixth and seventh respondents to permit admitting and registration of documents in respect of the properties that are the subject



WP.Nos.5864, 20043 & 30830 of 2015

matter of the Indenture of transfer dated 19.04.2005, registered as Doc. No.432 of 2005 in the office of the third respondent without citing the pendency of proceedings under Section 33A of the Indian Stamp Act.

3. The Writ Petition in W.P.No.30830 of 2015 has been filed to quash the impugned Order of the fifth respondent dated 12.09.2015 directing the petitioner to pay a sum of Rs.28,91,827 towards deficit stamp duty.

4. Brief facts leading to filing of these Writ Petitions are as follows :

The petitioner and the fourth respondent constituents of a group of companies held by the same management. The petitioner and the group of companies were engaged in the garment export business and had factories and office at Madras, Karnataka and other states. The fourth respondent was the absolute owner of the properties at Ambattur Industrial Estate, SIDCO Industrial Complex, Guindy, Amalapattu, Tanjore District etc. All the properties are located within the State of Tamilnadu. In 2004 – 2005, the petitioner was a subsidiary company of the fourth respondent which held 96.30% of the petitioner's total shareholding. Due to restructuring the business of the group of companies, a petition has been filed for sanction of a



WP.Nos.5864, 20043 & 30830 of 2015

Composite Scheme of Arrangement of Several of the Group of Companies.

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By an Order dated 09.09.2005, the respondents sanctioned the scheme presented by the said companies under the provisions of the Companies Act. Under the said scheme only the garment business of the fourth respondent stood transferred to the petitioner.

5. The 4th Respondent herein executed an Indenture of Transfer on 19-04-2005 in favour of the petitioner whereby several properties belonging to the 4th Respondent in Tamil Nadu were transferred to the Petitioner for a consideration of Rs.25 Crores. As the 4th Respondent was intending to purchase a property in Pattukottai to establish a liaison office there, it was considered convenient for the travelling signatories of both companies that the said Indenture of Transfer also be executed at Pattukottai on the same day. The Registered Office of the 4th Respondent was at Plot No.22 (SP). Thiru-vi-ka Industrial Estate, Guindy, Madras - 600 032 and the Registered Office of the Petitioner was at Super A8 & 9, Guindy Industrial Estate, Madras. The Appellants came within the Jurisdiction of the Registrar of Companies. Madras, Tamil Nadu. The 4th Respondent held 96.30% of the total shareholding in the Petitioner Company. Thus, the criteria for remission



WP.Nos.5864, 20043 & 30830 of 2015

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of stamp duty as contained in G.O.Ms No.1224, dated 25.04.1964 and amendment issued by the Commercial Taxes and Religious Endowment Department dated 25.01.1995 issued by the Government of Tamil Nadu were squarely applicable to the transfer sought to be achieved by the 4th respondent for the petitioner herein under the said Indenture of transfer dated 19-04-05. All the criteria required by the Government Order were satisfied and the 4th respondent and the petitioner were thus legally entitled for remission of stamp duty as per the said Government Order. Additionally, the Sub Registrar, Pattukottai made necessary enquiries directly with the Registrar of Companies vide its letter dated 19.04.05 and Vide a letter dated 25.04.05 and the Deputy Registrar of Companies, Madras, Tamil Nadu informed the Sub Registrar that the 4th Respondent was holding 96.30% of the paid up share capital of the petitioner as required by the Government Order. However, the 3rd Respondent, inspite of satisfying itself and registering the indenture of Transfer on 19.04.2005 issued a letter dated 24.02.06 calling upon the petitioner to pay a sum of Rs. 1,99,99,900/- as deficit stamp duty.



WP.Nos.5864, 20043 & 30830 of 2015

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6. The petitioner sent a reply with Annual Return and produced the relevant documents. The shareholding pattern is also submitted to the respondents. Even after that the second respondent all of a sudden issued an order dated 20.07.06 disallowing the remission of stamp duty and directed the Petitioner to pay deficit stamp duty of a sum of Rs.1,99,99,900/-. The petitioner and the 4th respondent challenged the said order before the first respondent. However, vide order dated 04.02.2009, the 1st respondent confirmed the order passed by the 2nd Respondent. Aggrieved against the order of the 1st respondent, the petitioner filed W.P.No.8034 of 2009 before this Court and this Court by an order dated 10.10.2013 directed the 2nd Respondent to issue a fresh show cause notice and proceed afresh. Therefore, the impugned Order has been passed. It is the contention of the petitioner that as per G.O.No.1244, the petitioner is entitled to exemption from paying stamp duty and the appeal filed against the Order of the first respondent has been dismissed. Hence, this Writ petition has been filed on the ground that the Government Order is squarely applicable to the petitioner's case and the petitioner is entitled for exemption from paying the stamp duty.



WP.Nos.5864, 20043 & 30830 of 2015

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7. The counter has been filed by the first respondent stating that as the petitioner did not fulfil the conditions set out in the Government Order, action was taken by the second respondent under section 33[a] of Indian Stamp Act and ordered for payment of stamp duty. The appeal filed against the said Order also has been dismissed on the ground that the company has not filed annual returns after 19.04.2005 and the company was unable to produce the certified copy of the relevant records kept in the office of the Registrar of Companies, Madras and the company has not produced any evidence or proof to substantiate that the Companies were functioning in any manner beneficial to the State of Tamil Nadu where from the concessions is sought to be availed. It is their further contention that the company has not produced the annual reports of the company covering the position on or after 19.04.2005 to prove that the fourth respondent held not less than 90% of the issued share capital of the Petitioner Company as per the conditions laid down in the notification issued in the Government Order No.1224. It is their further contention that the Indenture of Transfer was written on the non judicial stamp paper for the value of Rs.100/- under the impression that the same was entitled for exemption of stamp duty in terms of the notification issued in Government Order No.1224 Revenue dated 25.04.1964. After



WP.Nos.5864, 20043 & 30830 of 2015

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registration of the document by the third respondent, on verification it is found that the petitioner is not entitled for refund of Stamp Duty as per G.O.Ms.1224 Revenue dated 25.04.1964 as the Company has not fulfilled the conditions stipulated in the Government Order. District Registrar, Pudukottai, issued a certificate as provided under section 33[a] of the Indian Stamp Act. Hence, it is his contention that the company has filed the Annual Returns only for the period upto 29.09.2004 and thereafter, without filing any annual returns, shifted its registered office from Madras to Maharashtra on 03.06.2005. Hence, according to the respondents, the registered office has been shifted to Madras only for the purpose of availing the concession as per the Government Order. Hence, opposed the Writ petition.

8. The Writ Petition No.30830 of 2015 has been filed challenging the impugned Order dated 12.09.2005 passed by the fifth respondent for claiming an additional amount. It is the contention of the petitioner that when the Indenture of Transfer was registered originally an impugned Order has been issued for deficit stamp duty of Rs.1,99,99,900/-. When the Writ Petition is pending, the present impugned Order dated 12.09.2005 has been passed by the respondent for collecting extra amount of Rs.28,91,827/- on



WP.Nos.5864, 20043 & 30830 of 2015

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the ground that the valuation of one of the properties in the said indenture of transfer dated 19.04.2005, registered as document No.432 of 2005 in the office of the Sub Registrar, Pattukottai was undervalued at that time. Hence, the said communication has been challenged mainly on the ground that the same is without jurisdiction and without affording a hearing to the petitioner or holding an inquiry. It is their further contention that the impugned Order is passed contrary to Section 33[a] of the Indian Stamp Act.

9. Counter has been filed in the above matter stating that originally recovery certificate was issued for deficit stamp duty of Rs.1,99,99,900/- under Section 33A of the Indian Stamp Act. On the basis of the value of the property declared in the said document, the said amount has been paid on 28.02.2015 towards deficit stamp duty. The deficit registration fees of Rs.25,70,512 and deficit registration fees of Rs.3,21,315/- which are due to the Government based on the guideline value of the property has not been paid. Therefore, a communication has been sent for payment of deficit stamp duty. Hence, submitted that the petitioner is liable to pay that amount.

10. The learned counsel appearing for the petitioner would submit that the main issue revolve in these writ petitions is the applicability of the



WP.Nos.5864, 20043 & 30830 of 2015

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G.O.Ms.1224 Revenue dated 25.04.1964. According to the petitioner, the Government Order exempt the Stamp Duty in respect of transfer made by companies. Therefore, when the exemption is granted by the Government and the petitioner fulfilled all the conditions as per the Government Order, the same cannot be denied by the authorities. The Government Order itself indicate that what is required is only the registered office in the State of Tamilnadu. Hence, it is his contention that, when the petitioner's registered office was temporarily in Madras, the petitioner is certainly entitled to exemption granted by the Government of Tamilnadu. Therefore, rejecting the same on the ground that the accounts have not been produced cannot be sustained in the eye of law. In support of his contentions, he relied on the following judgments :

A.V.Fernandez Vs. The State of Kerala reported in AIR

1957 Supreme Court 657

Checkmate Services P. Ltd., Vs. Commissioner of

Income Tax -I in Civil Appeal No.2833 of 2016

Union of India and another Vs. Azadi Bachao Andolan

and another – in Civil Appeal No 8161, 8162, 8163 and 8164



WP.Nos.5864, 20043 & 30830 of 2015

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**Vodafone International Holdings B.V. Vs. Union of
India & another in Civil Appeal No.733 of 2012.**

and submitted that statutory enactment must ordinarily construed in its language and that no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute and the petitioner is entitled for exemption of stamp duty. Hence, the Order rejecting exemption and claiming Rs.1,99,99,900/- towards Stamp Duty has to be set aside. It is his further contention that subsequently, he has paid that amount. When the petitioner company wanted to sell a portion of the property, the amount has been paid only under protest. Therefore, the said amount is required to be returned to the petitioner.

11. As far as the Writ Petition in W.P.No.20043 of 2015 is concerned, the learned counsel appearing for the petitioner fairly submitted that the very prayer is to direct the respondents 1, 5, 6 and 7 to register the document and as the document has been subsequently registered, the prayer in this Writ Petition has become infructuous.



WP.Nos.5864, 20043 & 30830 of 2015

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12. As far as the Writ petition in W.P.No.30830 of 2015 is concerned, the learned counsel appearing for the petitioner submitted that certificate under section 33[a] has been issued for recovery of deficit stamp duty of Rs.1,99,99,900/- in the year 2006, within one year from the date of registration, i.e., 19.04.2005. Now after 10 years of registration, further demand has been made claiming deficit stamp duty of a sum of Rs.28,91,827/- without any enquiry or determination, which is totally against the provision of law and no such demand can be made based on the guideline value, that too without any enquiry. Hence, the above Order demanding further sum of Rs.28,91,827/- has to be quashed.

13. Whereas, the learned counsel appearing for the learned Advocate General would submit that the intention of the Government Order is to encourage the companies within the State of Tamilnadu. Whereas, only for the purpose of registering the property, the registered office has been shifted to Madras from Mumbai and after transfer was effected, again the registered office has been shifted on 03.06.2005. No annual return, whatsoever maintained in the registered office as required in the original Government



WP.Nos.5864, 20043 & 30830 of 2015

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Order has been produced to avail benefits. The very intention of the Government Order is to encourage the companies in Tamilnadu to avail benefits. Whereas, only for the purpose of avoiding huge stamp duty, taking note of the fact that the proviso was amended to the effect that the registered office should be in Madras, the registered office of the petitioner company and the fourth respondent company shifted to Madras for avoiding stamp duty. Therefore, it is his contention that the conduct of the petitioner is nothing but fraud on Registration and Stamp Duty and such things cannot be entertained by giving narrow interpretation to the Government Order. Hence, it is his contention that the property worth about Rs.25 crores has been registered even without paying a single pie towards stamp duty. It has been objected and demand notice for recovery of a sum of Rs.1,99,99, 900/- has been issued. Immediately after the registration of the Indenture of Transfer on 19.04.2005, a portion of the property has been sought to be sold by the petitioner. At that time, when the document was not admitted and for the purpose of further sale, stamp duty was paid in respect of the Indenture of Transfer dated 19.04.2005. Thereafter, it is found that at the time of issuing certificate under section 33[a] of the Indian Stamp Act, the stamp duty has been collected on the basis of the value set out in the document. Further



WP.Nos.5864, 20043 & 30830 of 2015

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demand has been issued on the basis of the guideline value. Therefore, according to him, the same will also fall under the ambit of statutory provisions and the same cannot be questioned in the Writ Petition. Hence, prays to dismiss the Writ Petition.

14. The first Writ Petition, i.e., W.P.No.5864 of 2015 has been filed mainly challenging the impugned Order claiming Stamp Duty of Rs.1,99,99,900/- on the basis of the Government Order No.1224. In the above Government Order, Clause 38 reads as follows :

“[38] Instrument evidencing transfer of property between companies limited by the shares in the Companies Act, 1956, in a case where [i] at least 90 percent of the issued share capital of the transferee company is in the beneficial ownership of the transferor company or [ii] where the transfer takes place between a parent company and a subsidiary company one of which is the beneficial owner of not less than 90 per cent of the issued share capital of the other, or [iii] where the transfer takes place between two subsidiary companies of each of which not less than 90 per cent of the share capital is in the beneficial



WP.Nos.5864, 20043 & 30830 of 2015

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ownership of a common parent company;”

15. A perusal of the above clause indicate that to avail benefit in the above Government Order, atleast 90% of the issued share capital of the transferee company is in the beneficial ownership of the transfer or where the transfer takes place between a parent company and subsidiary company one of which is beneficial owner of not less than 90% of the issued share capital of the other or where the transfer takes place between two subsidiary companies of each of which not less than 90 per cent of the share capital is in the beneficial ownership of a common parent company provided that a certified copy of the relevant records of the companies kept in the office of the Registrar of companies Madras is produced by the parties to the instrument to prove that the conditions above prescribed are fulfilled. The above Government Order, however, has been amended on 25.01.1995 as follows :

“Provided that a certified copy of the relevant records of the companies kept in the office of the Registrar of companies Madras is produced by the parties to the instrument to prove that the conditions above prescribed are fulfilled”



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16. The remission will apply only in case where the properties situate in the State of Tamilnadu or their registered office in the State of Tamilnadu. It appears that pursuant to the above amendment, the Registered Office of the petitioner company and the fourth respondent company were shifted to Madras on 01.03.2005 and registered the Indenture of Transfer on 19.04.2005. After the registration of the Indenture of Transfer, again the registered office has been shifted to original place in Mumbai. These facts are not in dispute. The Indenture of Transfer has been registered and the total market value of the immovable property shown in the Indenture of Transfer is a sum of Rs.25 crores. Originally, notice has been issued on 24.02.2006 demanding Rs.1,99,99,900 Stamp Duty on the criteria that 90% of the issued share capital of the transferee company is in the beneficial ownership of the common parent company has not been established. The impugned Order further indicate that on the date of Indenture of Transfer an extent 1.5 cents were purchased and when the presentation of sale deed has been questioned, the Registered Office was transferred to Tamilnadu and only a small extent of land has been purchased to show that as if the property is situated in Tamilnadu. The above impugned Order dated 09.02.2009 has been



WP.Nos.5864, 20043 & 30830 of 2015

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challenged before this Court in W.P.No.8034 of 2009 and the Writ Petition has been allowed setting aside the Order and was remanded to the second respondent with a direction to issue a fresh show cause notice. Thereafter, once again the impugned Order has been passed. In impugned Order dated 06.01.2016, it is clearly recorded to the effect that the company has filed annual reports for the period upto 29.09.2004 and thereafter, without filing any annual report, shifted its registered office to Mumbai on 03.06.2005. The appellant, viz., the petitioner has not produced the certified copy of the relevant records of the Companies kept in the Office of the Registrar of Companies, Madras as per the proviso to Item No.38 of the notification issued by the Government in G.O.Ms.1224 Revenue dated 05.04.1964 to prove that the conditions specified as per first proviso were fulfilled for availing the remission of stamp duty as on 19.04.2005 and immediately after registration, within 45 days the registered office has been shifted to Mumbai. Therefore, Revenue Authority has held that the company has not produced any evidence to substantiate that the companies were functioning in any manner beneficial to the State of Tamilnadu where the concession sought to be availed and rejected the claim of the petitioner.



WP.Nos.5864, 20043 & 30830 of 2015

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17. The Government Order indicate that the benefit is to be extended to the companies where the property is situate within the State of Tamilnadu, where the registered office situate in Madras. It is relevant to note that the very object of granting such exemption is to promote companies who are operating inside the State to avail the benefits. Merely taking advantage of the proviso in the Government Order that the registered office of the Company to be in Madras to avail such benefit, the registered office of the company has been shifted to Madras only for that purpose. The annual returns were filed up to 29.04.2004 and after registering the document on 19.04.2005, the petitioner's registered office has been once again shifted to Maharashtra on 03.06.2005, within a period of 45 days from the date of execution of the Indenture of Transfer. Hence, this Court is of the view that when the Government Order provides certain exemption, the conditions stipulated in the Government Order has to be strictly complied for availing any benefit. Particularly, the Government Order granting exemption in fiscal matters, the conditions set out to avail such benefit has to be strictly complied, particularly for availing such benefits. Shifting the registered office for the purpose of avoiding huge stamp duty and shifting the registered office immediately within a short span of 45 days after registration, it can be easily



WP.Nos.5864, 20043 & 30830 of 2015

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inferred that the registered office has been transferred only to avoid stamp duty payable legally in the State. The act of the petitioner is nothing but clear fraud on the Stamp and Registration and such things cannot be encouraged.

18. In Polester and Co. Ltd. etc. Vs. Addl. Commissioner of Sales Tax, New Delhi reported in AIR 1978 Supreme Court 897, the Honourable Supreme Court in para 12 has held as follows :

“It must also be remembered that [section 5\(2\)\(a\)\(ii\)](#) and the Second Proviso occur in a taxing statute and it is a well settled rule of interpretation that in construing a taxing statute "one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law". The oft quoted words of Rowlett, J., in Cape Brandy Syndicate v. Inland Revenue Commissioner(1) lay down the correct rule of interpretation in case of a (fiscal statute : "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 a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used". It is a rule firmly established that "the words of a taxing Act must never be stretched against a tax-payer". If the legislature has, failed to clarify its meaning by use of appropriate language, the benefit must go to the tax-payer. Even if there is any doubt as to



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interpretation, it must be resolved in favour of the subject. We would, therefore, be extremely loathe to add in [section 5\(2\)\(a\) \(ii\)](#) and the Second Proviso words which are not there and which, if added, 'would have the effect of imposing tax liability on the purchasing dealer. Moreover, it may not be noted that if the purchasing dealer resells the goods outside Delhi, then, on the construction contended for on behalf of the Revenue, he would be liable to include the price of the goods paid by him in his return of taxable turnover and pay tax on the basis of such return and if he fails to do so, he would expose himself to penalty, though he has complied literally with the declaration made by him. We find that in fact a penalty of Rs. 2 lacs has been imposed on the assessee in Civil Appeal No. 1085 of 1977 for not including the price of the goods purchased by them in their return of taxable turnover and paying tax on the basis of such return. It would be flying in the face of well settled rules of construction of a taxing statute to read the words 'inside the Union Territory of Delhi' in [section 5\(2\)\(a\)\(ii\)](#) and the Second Proviso, when the plain and undoubted effect of the addition of such words would be to expose a purchasing dealer to penalty.”

19. In the above judgment the Honourable Apex Court has further held that if there is one principle of interpretation more well settled proposition, it is that a statutory enhancement must ordinarily be construed according to the



WP.Nos.5864, 20043 & 30830 of 2015

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plain natural meaning of its language and that no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute, this Court is of the view that to avail any such benefits under the statute strict compliance of the concession is sine qua non. The very impugned Order itself clearly indicate that though the registered office is shifted to Madras for the purpose of effecting Indenture of Transfer, the annual returns has not been filed after 2004. As the conditions set out in Clause 38 has not been fulfilled, the respondent has rightly rejected the claim of the petitioner for remission. Accordingly, this Court is of the view that the petitioner, who has failed to fulfil the conditions in the Government Order, is not entitled to the remission as per the Government Order and the Writ Petition in W.P.No.5864 of 2015 is liable to be dismissed.

20. In respect of the Writ Petition in W.P.No.20043 of 2015 has to be dismissed as infructuous since the document in question has already been registered and the payment is also paid by the petitioner.



WP.Nos.5864, 20043 & 30830 of 2015

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21. As far as the other Writ Petition in W.P.No.30830 of 2015 challenging the impugned Order dated 12.09.2005 claiming deficit stamp duty of Rs.25,70,512/- and registration fee of Rs.3,21,315/-, it is relevant to note that when the Indenture of Transfer was registered in the year 2005, the document was never impounded on the ground of under valuation. Infact, the document was registered on the basis of the Government Order. Subsequently, the demand was issued on the basis guideline value of the property. The said demand has been made within one year after the registration of the document under section 33[a] of the Stamp Act. Having raised the demand on the market value and without enquiry either under section 47A [2] or [3] of the Indian Stamp Act, the value cannot be determined unilaterally by the respondent. Further no suo motu powers also exercised by the Chief Controlling Authority as per sub clause 6 of Section 47A of the Indian Stamp Act. Be that as it may.

22. To initiate suo motu power, or for either under subclause 2 or 3 of 47A of the Stamp Act has not been passed by the Collector. Therefore, unilaterally, the respondent cannot fix the value. The impugned demand has been issued for deficit stamp duty of a sum of Rs.25,70,512/- and



WP.Nos.5864, 20043 & 30830 of 2015

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registration fee of Rs.3,21,315/- mainly on the ground that same has been issued on the basis of the guideline value. It is relevant to note that such impugned communication has been sent only on 12.09.2015, after 10 years of registration. It is further relevant to note that Section 33[a] of the Indian Stamp Act reads as follows :

“33-A. Recovery of deficit stamp duty – [1]
Notwithstanding anything contained in section 33 of in any other provisions of this Act, if , after the registration of any instrument under the Registration Act, 1908 [Central Act XVI of 1908], it is found that the proper stamp duty payable under this Act in respect of such instrument has not been paid or has been insufficiently paid, such duty or the deficit, as the case may be, may, on a certificate from the Registrar of the district under the Registration Act, 1908 [Central Act XVI of 1908] be recovered from the person liable to pay the duty, as an arrear of land revenue:

Provided that no such certificate shall be granted unless due to inquiry is made and such person is given an opportunity of being heard :

Provided further that no such inquiry shall be commenced after the expiry of three years from the date of registration of the instrument.”



WP.Nos.5864, 20043 & 30830 of 2015

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23. It is relevant to note that for issuing any certificate, proper enquiry should be made and an opportunity should be given. The proviso also makes it clear that no enquiry has to be commenced after three years from the date of registration of the instrument. Therefore, the demand notice issued on the basis of the guideline value beyond the period of 10 years is contrary to the proviso to section 33[A] of the Tamil Nadu Stamp Manual that too without making any enquiry. In such view of the matter, the impugned demand dated 12.09.2015 cannot be sustained in the eye of law and the Writ Petition is liable to be dismissed.

24. Accordingly,

1] W.P.No.5864 of 2015 is dismissed.

2] W.P.No.20043 of 2015 is dismissed as infructuous.

3] W.P.No.30830 of 2015 is allowed and the impugned Order dated 12.09.2015 is quashed.

Consequently, connected miscellaneous petitions are closed. No costs.

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WP.Nos.5864, 20043 & 30830 of 2015

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To,

1. The Chief Controlling Revenue Authority
& Inspector General of Registration, Tamil Nadu,
Mylapore, Chennai – 600 028.
2. The District Registrar [Administration],
Pattukottai.
3. Pattukottai Sub Registrar Joint – II,
Pattukottai, Tamil Nadu.
4. The Sub-Registrar,
Alandur, Chennai – 16.
5. The Sub-Registrar,
Ambattur, Chennai – 58.
6. The Sub-Registrar,
Konnur, Chennai – 23.
7. The Sub-Registrar,
Alandur, Chennai – 16.



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WP.Nos.5864, 20043 & 30830 of 2015

N.SATHISH KUMAR, J.

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WP.Nos.5864, 20043 & 30830 of 2015

29.11.2022