

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6052 OF 2014

M/s. Sai Trading Company)
A Partnership Firm having its office)
at 122, HADCO Colony, District Sangli)
Through its Partner,)
Shri Sampatrao Pandurang Patil)
age about 50 yrs., Occ. Agriculturist)
R/at Near School No.9,)
Sangliwadi, Sangli.) .. Petitioner

Versus

The District Controller and)
Collector of Stamps, Sangli)
Having its office at)
Rajwada Compound, Sangli 416 416.) .. Respondents

Mr. Drupad S. Patil for the petitioner.
Ms. M.S. Bane, AGP for State.

CORAM : JITENDRA JAIN, J.
RESERVED ON : 7th October 2023
PRONOUNCED ON : 18th October 2023

Judgment :-

1. Rule. Rule made returnable forthwith. Ms. Bane, learned AGP waives service on behalf of the State. By consent of the parties heard finally.

2. By this writ petition filed under Article 226 of the Constitution of India, the petitioner has challenged an order dated 23rd

May 2014 passed by the Controlling Revenue Authority, Maharashtra State, Pune in Appeal No. 4 of 2012 whereby the said authority has held that the agreement dated 27th April 2006 falls within the definition of 'lease' as defined by Section 2(n)(iii) and is chargeable to stamp duty under Article 36(i) of Schedule I of the Maharashtra Stamp Act, formerly known as Bombay Stamp Act (for short 'the Stamp Act').

3. **Narrative of Events :-**

(i) On 27th April 2006, the petitioner on a stamp paper of Rs.500/- executed an agreement with Sangli, Miraj and Kupwad City Municipal Corporation for collection of octroi imposed, assessed and levied under the provisions of the Bombay Provincial Municipal Corporations Act, 1949, Sangli, Miraj and Kupwad City Municipal Corporation Octroi Rules, 1999 and Rules framed in respect of imposition, levy, assessment and recovery of octroi. The period of the said agreement was from 1st May 2006 to 30th April 2007. As per the said agreement, the petitioner was to act as an agent for the Corporation to collect octroi. The consideration payable to the petitioner as per the agreement was excess amount collected over and above Rs. 43,06,66,666/-. It is important to reproduce certain clauses of the said agreement for the purpose of the present order which are

as under :-

“1) In consideration of the promise, the Corporation do hereby appoint the Agent and the Agent do hereby agree to act as Agent of the Corporation for collection of octroi imposed, assessed and levied by the Corporation under the provisions of the said Act and Rules, on entry of goods imported within the octroi limits of the Sangli, Miraj and Kupwad City Municipal Corporation with an intention to use, sale or consumption therein, for period from 1/5/2006 to 30/4/2007. The amount to be paid by the Agent during contract periods is Rs.43,06,66,666/- (Rs.Fourty Three Crores Six Lakh Sixty Six Thousand Six Hundred Sixty Six Only). The agent shall raise no dispute regarding minimum offer amount even if there is a mistake in its calculation (due to any reason) by the Municipal Corporation. The offerer shall be bound by the amount by him and accepted by the Municipal Corporation.

2) The Agent will collect entire octroi at the rate fixed by the Corporation on the goods imported within the octroi limits of the Corporation for a period from 1/5/2006 to 30/4/2007 by appointment of his own employees.

The agent should strictly follow the procedure and rates for levy, assessment and recovery of octroi as specified and fixed by the Bombay Provincial Municipal Corporation Act, 1949 and rules thereunder.

The Agent shall work within the frame work of and comply with and bound by all the provisions the following Acts, and Rules -

- I) Bombay Provincial Municipal Corporation Act, 1949.*
- II) And rules thereunder.*
- III) Sangli, Miraj and Kupwad City Municipal Corporation octroi Rules, 1999.*
- IV) Any other rules or byelaws in respect of imposition, levy, assessment and Recovery of octroi and matters incidental thereto.*

However, the rates of octroi will not be changed by the Municipal Corporation during the period of contract. However, the agent will be bound by the directives of the State Govt., if any, regarding the exemption of the octroi to any commodity.

..... The octroi amount collected by the agent in this manner shall be fully remitted to the Municipal Corporation on the very day and such amount shall not be taken into account for purpose of computing weekly payment by the octroi agent. In other words, the entire amount so called shall be the income of the Municipal Corporation and octroi agent shall have no relief in the amount of weekly payment on this account.

.....

3) *In consideration of the agent having agreed to collect during the subsistence of this agreement, the Agent shall be entitled to retain with him as and by way of commission, from out of amount of octroi collected by him during period of contract only that much amount which exceeds the amount quoted by him in his offer as and by way of contract amount.*

Provided that the entire amount of daily octroi collected (i.e. daily collection) by the Agent be remitted daily by him until of 2% of the total contract amount is paid. If the total of daily collection during any week is less than the total 2% of the contract amount, the agent shall ensure at the end of the week that fall amount of 296 of the contract amount. Other words, it shall be binding on the agent to see that 2% of the contract amount is paid every week end to the Corporation, irrespective of shortfall during that week. The agent shall be entitled to retain with him as his commission the amount in excess of the said collected by him during any week.

Provided further that the Agent shall, during the period of contract, continue to remit to the Corporation as aforesaid octroi collected by him till such remission by him equals to contract amount. Thereafter only the octroi shall be collected by him. If during the period of contract the octroi collected fails short of contract amount quoted by the agent in his offer then the agent shall not be entitled to receive from the Corporation any amount as an by way of his commission. On the other hand, if in any week the amount of octroi collected by agent falls short of the amount specified above, then the agent shall forthwith remit to the Corporation, along with the amount of octroi collected by him, the shortfall in the collection of octroi relating to that week so as to make the amount of collection of octroi in that week equal to the amount of the 2% of the total contract amount.

(4) to (6).....

7) *The agent shall not be entitled to any compensation, rebate or reduction in the amount quoted by the agent in his offer whatsoever on the account that, there is closure of the market or the strike by the merchants or riots or naturalism calamity or any other such reasons or decrease in intensity or potentiality or business or collection of octroi any reason whatsoever.*

8) *It is hereby declare and agreed that Corporation shall hold security deposit in the form of Bank Guarantees of Rs.6,25,96,800/- (Rs. Six Crores Twenty Five Lakhs Ninety Six Thousand Eight Hundred Only) furnished by the agent, not only for the period of contract but thereafter till the entire of the octroi amount refundable under the provisions of the said Act and Rules is refunded to the importers of goods and said Bank*

Guarantees in the form of security deposit shall be held by the Corporation as security deposit for the due performance of all the terms of the contract, conditions and provisions of the contract.

In the event of termination of agency due to delay in payment of weekly amount, or any such reason in excess of permissible of limit/period (except under specific permission of the Govt.) or in the event of the agent relinquishing the agency for any reason the Corporation shall recover 5% of the tender amount offered by the agent and accepted by the Corporation per month for the entire remaining period of contract by liquidating the bank guarantee. In computing the remaining period, the period less than 15 days shall be ignored and the period more than 15 days shall be counted as one month.

Upon compliance by the agent with all the obligation and the requirements of the contract, the Corporation shall release the Bank Guarantee or such part thereof, as shall not be forfeited or appropriated as aforesaid.”

(ii) On 13th March 2007, a show cause notice was issued to the petitioner to show cause as to why Rs. 1,29,19,510/- should not be recovered as differential duty and a penalty of Rs. 31,00,682/- should not be imposed.

(iii) Vide letters dated 4th April 2007, 30th July 2007 and 25th April 2011, the petitioner disputed the demand for differential duty and justified the execution of the agreement on stamp paper of Rs. 500/-.

(iv) Pending the above representations, a recovery notice was issued by the respondents which was challenged in Writ Petition No.5209 of 2011 and the Division Bench of this Court on 21st September 2011 quashed the said recovery notice and remanded the matter back to the authorities to reconsider the issue of payment of

deficit stamp duty as well as penalty in accordance with law by following the principles of natural justice.

(v) On 15th March 2012, an order came to be passed by the respondents demanding differential duty of Rs. 14,79,295/- and penalty of Rs. 21,00,599/- on execution of the agreement dated 27th April 2006.

4. The above-referred order was challenged in appeal and the Appellate Authority on 23rd May 2014, held that agreement dated 27th April 2006 is to be considered as 'lease' as per Section 2(n)(iii) of the Act and consequently, the said agreement would be exigible to stamp duty under Article 36(i) and rate of duty leviable would be as per Article 25 dealing with conveyance.

5. It is on this backdrop that the present petition is filed assailing the appellate order dated 23rd May 2014.

Submissions of the Petitioner :

6. The petitioner contends that the agreement dated 27th April 2006 does not constitute an instrument by which tolls of any description are let as defined by Section 2(n)(iii) of the Act and, therefore, the authorities are not justified in levying duty by treating

the same as 'lease.' The petitioner has relied upon various clauses of the agreement in support of its submissions. It is the contention of the petitioner that the agreement dated 27th April 2006 is a right conferred upon the petitioner for collection of octroi levied by the Corporation and the petitioner was only acting as a collection agent. The petitioner submits that such a right given by the agreement dated 27th April 2006 cannot be treated as an 'instrument by which tolls of any description are let.' Therefore, it is the contention of the petitioner that the impugned order imposing the duty is illegal and requires to be set aside.

7. On 10th October 2023, the present petition was listed under the head 'Direction' and the petitioner was directed to give its submissions on the applicability of the decision of the Supreme Court reported in ***Nasiruddin and Anr. Vs. State of U.P. (2018) 1 SCC 754***, and Explanation III to Article 36 of the Schedule to the Stamp Act. The petitioner, as directed by the Court, has filed written submissions with respect to the aforesaid query raised by the Court. It is the contention of the petitioner that definition of 'lease' applies only if rights are created with respect to movable or immovable property and not to the present agreement by which collection of octroi is let out. The petitioner has also submitted that there is a difference between

toll and octroi and since Section 2(n)(iii) refers to toll, collection of octroi is not covered by the said provision. With respect to the decision of the Supreme Court in the case of ***Nasiruddin and Anr. (supra)***, the Petitioner contended that the contract before the Supreme Court was for collection of parking charges, Tehbazari etc. and therefore, same was for use of land and therefore covered by the definition of 'lease' which is not the fact of the present case. The petitioner also disputed the calculation of duty demanded on the ground that security deposit of Rs. 6.25 crores should not be added to the contract value of Rs. 43.06 crores. The petitioner contended that the impugned order has not considered proviso to Section 32A which provides that if the person liable to pay deficit amount of stamp duty and the penalty, pays within one month from the date of receipt of the said notice, the deficit amount of stamp duty and also pays fixed penalty of Rs. 250/-, he shall not be liable to make payment of penalty at the rate of 2 per cent, as provided in the first proviso and the reference made to the Collector of the District shall abate. It is the case of the petitioner that the authorities have not provided window of the said one month to the petitioner. With respect to applicability of Explanation III to Article 36 of the Stamp Act, it is contended that Explanation III cannot be read in isolation. It will have to be read along with the main provision, i.e. Article 36 and since the lease

period is not exceeding 5 years, 10% of the market value is to be taken into consideration for arriving at the duty.

Submissions of the Respondents :

8. On the other hand, the respondents have supported the orders of the lower authorities and contended that octroi is a toll and, therefore, the agreement dated 27th April 2006 is an instrument by which tolls of any description are let and, therefore, the impugned order is justified. The respondents also relied upon the decisions of the Supreme Court in case of ***State of Uttarakhand & Ors. Vs. Harpal Singh Rawat (2011) 4 SCC 575*** and ***State of U.P. & Ors. Vs. Devi Dayal Singh, AIR 2000 SC 961*** in support of their contentions.

Analysis and Reasoning :-

9. **Issue :-** The short issue which arises in the present petition is whether the agreement dated 27th April 2006 would fall within the definition of ‘lease’ as defined by Section 2(n) of the Stamp Act which reads thus : -

“2 (n) “lease” means a lease of immovable property, [or moveable (or both)] and includes also,—

(i) a Patta ;

(ii) a Kabulayat, or other undertaking in writing, not being a counterpart of a lease to cultivate, occupy or pay or deliver rent for immovable property ;

(iii) any instrument by which tolls of any description are let ;

(iv) any writing on an application for a lease intended to signify that the application is granted ;

(v) a decree or final order of any Civil Court in respect of lease.”

(emphasis supplied)

10. The relevant clause of Section 2(n) which would require consideration is clause (iii) which treats any “instrument” by which “tolls of any description” are let as a lease.

Whether agreement dated 27th April 2006 is an “instrument” :

11. Section 2(l) of the Stamp Act defines ‘instrument’ to include every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded, but does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt. Admittedly, the agreement dated 27th April 2006 is a document which creates rights and liabilities of the petitioner and the Corporation and, therefore, the said document dated 27th April 2006 is an ‘instrument’ as defined by the Stamp Act and the said phrase that is “instrument” appears in clause (iii) of Section 2(n) of the Stamp Act.

“Tolls of any description” :

12. The next phrase in clause (iii) which requires consideration is whether by the above instrument (agreement dated 27th April 2006) ‘tolls of any description are let.’ Therefore, what is required to be considered is what is the meaning of the term ‘toll.’ This word is not defined in the Stamp Act.

13. This section while presumably borrowing the definition of 'lease' as contained in The Transfer of Property Act, 1882, adds thereto a provision that 'lease' includes also among other things, documents described in clauses (i) to (v). The use of the words 'includes also' obviously implies that the definition of 'lease' as contained in the Stamp Act is wider and more comprehensive than the definition in Section 105 of The Transfer of Property Act. It would thus follow that even if a transaction does not amount to a lease under Section 105 of the latter Act, it may nonetheless be a lease for the purposes of the Stamp Act. A casual reading of the definition of 'lease' indicates that any instrument by which tolls of any description are let comes within the definition of this term. It is needless to say that the word 'toll' used in this sub-section means any sum of money which is taken in respect of some benefit.

14. Toll derives its meaning from a Greek word and it means 'tax'. The synonym for 'toll' is 'tax.'

15. **Dictionary meaning of the term 'Toll' & 'Octroi'**

(i) In *Encyclopaedic Law Lexicon Dictionary* by Justice **C.K. Thakker**, the expression 'toll' normally means a definite payment exacted by the State or the local authority; by virtue of

sovereignty or lordship, or in return for protection; more especially, for permission to pass somewhere, do some act, or perform some function. Another meaning attributed to the term is a charge for the landing or shipping goods at a port; a charge made for transport of goods, especially by railway or canal. The expression 'toll through' means where a town prescribes to have toll for every beast that goes through their town. The term 'toll traverse' means where one claims to have an amount for every beast that is driven over his ground.

(ii) In ***Judicial Dictionary* by K.J. Aiyar (Sixteenth Edition)**, a toll is a sum of money, taken in respect of a benefit arising out of the temporary use of land. It implies some consideration moving to the public, either in the form of a liberty, privilege or service. For the valid imposition of a toll, there must be a corresponding benefit.

(iii) In ***Prem & Saharay's Judicial Dictionary of Words and Phrases* by Dr. H.K. Saharay (Second Edition)**, the word 'octroi' comes from the work 'octroyer' which means to grant and in its original use meant an import or a toll or a town duty or goods brought into a town. The expression 'toll' normally means a definite payment exacted by the State or the local authority; by virtue of sovereignty or lordship, or in return for protection; more especially, for permission to pass somewhere, do some act, or perform some function. Another

meaning attributed to the term is a charge for the landing or shipping goods at a port; a charge made for transport of goods. Toll or tolnetum (or theolonio), is a sum of money which is taken in respect of some benefit. It implies some consideration moving to the public either in the form of a liberty, privilege or service. In other words, for the valid imposition of a toll, there must be a corresponding benefit.

16. The agreement dated 27th April 2006 is with respect to octroi and octroi is a tax on entry of goods within the municipal limits of a Corporation. Therefore, the phrase ‘tolls of any description’ would mean ‘tax of any description’ and octroi being a tax would fall within the phrase ‘tolls of any description’ as used in clause (iii) of Section 2(n). The phrase ‘tolls of any description’ is very wide to include within its fold tax of any description. The phrase “of any description” qualifies “tolls” and therefore, toll by any nomenclature would be covered by Section 2(n)(iii) of the Stamp Act. The agreement dated 27th April 2006 is therefore an instrument by which collection of tax is outsourced to the petitioner and would therefore fall within the meaning of the term ‘lease’ as defined in Section 2(n) (iii) of the Stamp Act.

17. The above-referred view is supported by the decision of the Supreme Court in case of ***Nasiruddin and Anr. (supra)*** and in particular paragraph 20 of the said decision which reads thus:-

“20.As mentioned above, the Corporation in these cases awarded the contract to the appellants to recover the tolls (fees) from squatters, vendors, kiosks, etc. and for parking the vehicles in specified places. The contract was, therefore, for recovery of tolls and created rights and liabilities in favour of contracting parties qua each other. It cannot be disputed that the expression “tolls of any description” in sub-clause(c) would include all kinds of levy, charges, fees,etc. which the Corporation is entitled to charge under its Bye-law 41. A fortiori, the fees in question would also fall under Section 2(16)(c) of the Stamp Act.”

(emphasis supplied)

18. The Supreme Court in the above case was considering Section 2(16)(c) of the U.P. Stamp Act which is identical to Section 2(n)(iii) of the Maharashtra Stamp Act and, therefore, the decision of the Supreme Court in the case of ***Nasiruddin (supra)*** squarely covers the controversy which arises in the present petition and the view which I have taken above.

19. The decision relied upon by the respondents in the case of ***State of Uttarakhand & Ors. Vs. Harpal Singh Rawat (supra)*** although does not relate to collection of octroi, but on the

interpretation of the phrase 'lease' as defined under Section 2(16)(c) of the U.P. Stamp Act which is identical to Section 2(n)(iii) of the Maharashtra Stamp Act supports the case of the respondents. The instrument for consideration before the Supreme Court was with respect to right to collect toll from all those vehicles which pass through a bridge and the Supreme Court held it to be a 'lease' under Section 2(16)(c) of the U.P. Stamp Act.

20. The present petitioner's case also deals with collection of octroi on the entry of goods into the municipal limits of the Corporation. The phrase 'toll' is normally understood as a toll for using roads, but in the context of the definition of 'lease' under Section 2(n)(iii), the said general meaning would not have any relevance. Even otherwise, octroi is a toll on entry of goods into the municipal limits of a Corporation which is akin to a toll paid by vehicles for entry on a particular road.

21. The petitioner is not correct in contending that the definition under Section 2(n)(iii) would apply only with respect to movable and immovable property. The contention of the petitioner ignores the definition which provides that lease means a lease of movable property or immovable property or both and includes the

instruments specified in clauses (i) to (v). The case squarely falls within clause (iii) of Section 2(n) and not within the phrase of movable or immovable property. Section 2(n)(iii) is independent to and in addition to lease of movable or immovable property and therefore the contention of the petitioner on this ground that Section 2(n) deals with movable or immovable property is not correct. Secondly, the distinction sought to be made by the petitioner between toll and octroi is also not correct in the facts of the present case. Section 2(n)(iii) provides for 'toll of any description' and does not restrict the meaning of the term 'toll' as used for roads or bridges. The phrase 'toll' as observed by me earlier is a levy and the said word is followed by the phrase 'of any description' and therefore the contention of the petitioner by relying on the Indian Tolls Act and entries in the Constitution for interpreting Section 2(n)(iii) is erroneous. As observed by me earlier 'octroi' is a type of tax and the synonym for tax is toll. Therefore, in my view, octroi would be covered within the definition of the phrase 'tolls of any description' and cannot be given a restrictive meaning as sought to be contended by the petitioner. Similarly, the issue before the Supreme Court in the case of *Nasiruddin and Anr. (supra)* was whether the contract for collection of fees would fall within Section 2(16)(c) of the Stamp Act (which is similar to Section 2(n)(iii) of the Stamp Act). The Supreme

Court in paragraph 20 expressly states that the contract was for recovery of all kinds of levy, charges, fees, etc. which the Corporation is entitled to charge and would fall under Section 2(16)(c) of the Stamp Act. In the case of the present petition also, octroi is a levy charged by the Corporation under the Bombay Provincial Municipal Corporations Act, 1949 and therefore would squarely fall in Section 2(n)(iii) of the Stamp Act. The Supreme Court was not concerned with the issue of lease of immovable property, but the issue before the Supreme Court was whether the instrument by which collection of levy is outsourced would fall within the definition of 'lease' as per section 2(16)(c) of the relevant Stamp Act. Therefore, the contention of the petitioner that only toll with respect to immovable property would fall within the definition of 'lease' is an erroneous reading of the decision of the Supreme Court. The ratio of the Supreme Court is that the instrument is for collection of any levy, charges, fees, etc. which the Corporation is entitled to charge and the same would fall within Section 2(16)(c) of the Stamp Act which is identical to Section 2(n)(iii) of the Stamp Act under consideration.

22. The provisions of Section 32A have not been invoked in the present proceedings by the respondents. Section 32A applies when the instrument is presented for registration under the provisions of the

Registration Act, 1908. In the instant case, the document dated 27th April 2006 has not been presented for registration under the provisions of the Registration Act and therefore reliance placed by the petitioner on the said provision is misconceived. The original order dated 15th March 2012 (which was carried in appeal) has been passed under Section 33 of the Stamp Act and penalty is levied under Section 39(1)(b) of the Act and therefore, petitioner's reliance on Section 32A is erroneous.

23. The petitioner in the written submission has relied on second proviso to Section 32A (2) contending that the window of one month specified in the said proviso has not been granted to the petitioner. The second proviso appears in Section 32A(2) of the Stamp Act. Section 32A(2) provides that when market value of the immovable property has not been truly set forth, then the registering officer shall refer the valuation to the Collector. The first proviso provides for issuing notice to the person, who is liable to pay stamp duty on true market value of the immovable property calling upon such person to pay the deficit amount of stamp duty and penalty on the deficient portion of the stamp duty. The second proviso provides that if on the receipt of such notice, a person pays within one month the deficient amount of stamp duty and also pays the fixed penalty

of Rs.250/- then he shall not be liable to make payment of penalty at the rate of 2 per cent, as provided in the first proviso and the reference already made to the Collector of the District shall abate. In the instant case before me, the instrument under consideration is not for immovable property and, therefore, the provisions of Section 32A(2) (which deals only with immovable property) and consequently, the provisos thereto are not applicable to the facts of the petitioner's case. Therefore, the question of giving one-month window under Section 32A as contended by the petitioner is misconceived.

24. The petitioner has also disputed the working of stamp duty demanded. This issue of what should be the correct stamp duty can be remanded back to the appropriate authority of the respondents. I have already held that the instrument under consideration is an instrument of lease. Therefore, Article 36 of Schedule I to the Stamp Act would be relevant for the purpose of calculation of stamp duty. Article 36(i) which is a general entry provides that if the period of lease is less than one year then stamp duty would be leviable on 10% of the market value and the rate of stamp duty would be that provided under Article 25 (a), (b) or (c). It is also important to note Explanation III to Article 36 which is a special entry provides that if the instrument falls under

Section 2(n)(iii) then the contract value will be treated as the market value (which in the instant case is Rs. 43.06 cr.) and the stamp duty would be as per Article 25(a) which is 3% and therefore, whether the benefit of 10% of the market value for calculation of stamp duty will be available to cases covered under Explanation III or not will have to be examined. However, this issue can be examined by the authorities in remand proceedings for the purpose of calculation of correct stamp duty. Therefore, in my view, the respondents should examine the applicability of Explanation III for determining the stamp duty. The authorities would then consider what would be the appropriate stamp duty payable by the petitioner that is whether 3% should be on 10% of Rs.43.06 crores or on Rs.43.06 crores. The petitioner's contention on security deposit amount not to be taken into account should also be considered for arriving at the market value. Therefore, on this issue the impugned order is remanded back only for the limited purpose of calculating the correct stamp duty under Article 36 of Schedule I to the Stamp Act.

25. In view of above, the following order is passed:

- (i) The agreement dated 27th April 2006 is to be treated as instrument of lease under Section 2(n)(iii) of the Maharashtra Stamp Act and liable for stamp duty.

- (ii) The computation of correct stamp duty payable is remanded back to the authorities for de novo consideration as per para 24 above and all the contentions only on this issue are kept open.
- (iii) The respondents would recalculate the correct stamp duty within a period of 8 weeks from today.
- (iv) No order as to costs.

26. Petition is disposed of in terms of the above order.

JITENDRA JAIN, J.