

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11353 OF 2019
WITH
INTERIM APPLICATION NO. 19215 OF 2022
WITH
INTERIM APPLICATION NO. 3713 OF 2020

Synechron Technologies Pvt. Ltd.,
Pune, a Private Limited I.T. Company
Having its office at Cedar Building,
Hinjewadi Phase – II, Pune 411057.

.. Petitioner

Versus

- 1. Chief Controlling Revenue**
Authority, Maharashtra State,
Ground Floor, New Administrative
Buildings, Opp. Council Hall,
Pune 411 001.
- 2. The Collector of Stamps,**
Pune 411 011.
- 3. Government of Maharashtra,**
Through the Secretaries Revenue
& Forest Department & Information
& Technology Department,
New Administrative Building,
Opp. Mantralaya, Mumbai 400 032.

.. Respondents.

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- Mr. Mukesh Vashi, Senior Advocate a/w. Ms. Prachi Khaudge i/by
M.P. Vashi and Associates for Petitioner.
 - Mr. S.H. Kankal, AGP for Respondents – State.
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CORAM : MILIND N. JADHAV, J.
Reserved on : January 05, 2023.
Pronounced on : June 05, 2023.

JUDGMENT:

1. By the present Writ Petition, Petitioner has prayed for the following reliefs: -

“a. That the records and files pertaining to impugned order dated 15.10.2019 (Exh. “L”) be called for and after going into legality and validity of the same, quash and set aside the same.

b. That pending the hearing and final disposal of the petition, operation of the impugned order dated 15.10.2019 (Exh. “L”), be stayed.

c. That the Respondents be restrained by and order and injunction of this Hon’ble Court from encashing Bank Guarantee given by the Petitioner for an amount of Rs. 1.5 crore.”

2. By the present Writ Petition, Petitioner has challenged the order dated 15.10.2019 passed by Respondent No.1 - Chief Controlling Revenue Authority, Maharashtra whereby the order dated 06.12.2018 passed by Respondent No.2 - Collector of Stamps, Pune is confirmed requiring the Petitioner to pay a total amount of Rs.4.91 crore towards stamp duty inclusive of 2% penalty per month as per Section 39 of the Maharashtra Stamp Act, 1958 (for short “**the said Act**”).

3. Before I advert to the submissions, it would be pertinent to refer to such relevant facts which are necessary to decide the challenge in the present Writ Petition:-

3.1. Petitioner is an IT Company (Information Technology Company) started in the year 2001. Respondent No.1 is the Chief Controlling Revenue Authority, Respondent No.2 is the Collector of Stamps and Respondent No.3 is the Government of Maharashtra.

3.2. Respondent No.3 i.e. Government of Maharashtra declared a policy in the year 2009 wherein IT/ITES units situated in Special Economic Zone (for short “SEZ”) would be granted stamp duty exemption of 75%.

3.3. Petitioner procured certificate dated 02.09.2014 from Respondent No.3. Petitioner also procured certification of approval vide Certificates dated 21.02.2013, 05.07.2013 and 28.01.2014 from the Development Council, Government of India certifying that Petitioner’s office premises are situated at Cedar Building, Ascendas IT Park, Rajiv Gandhi Infotech Park, MIDC Phase-III, Hinjewadi, Pune 411 057.

3.4. Petitioner acquired premises for expansion of its business on leasehold basis through 8 registered lease transactions and stamp duty was paid on the same. Stamp duty was calculated by the Joint Sub Registrar, Pune by giving remission of 75% in stamp duty to the Petitioner.

3.5. Respondent No.3 raised an objection after a period of 3 years to the effect that the remission in stamp duty granted to

Petitioner is irregular.

3.6. Petitioner was served with a letter dated 19.10.2016 from Respondent No.2 referring to the objections raised by Respondent No.3.

3.7. Petitioner on 30.11.2016 visited the office of Respondent No.2, placed all material on record and requested for a personal hearing. Petitioner was again served with a copy of letter dated 05.07.2017 addressed by Respondent No.2 to Respondent No.3. Petitioner received letter dated 26.02.2018 inquiring whether the Petitioner is a new IT & ITES Unit or an existing IT & ITES Unit.

3.8. Respondent No.2 on 06.12.2018 passed the impugned order calling upon the Petitioner to pay Rs.4.91 crore towards stamp duty on the 8 registered lease transactions. Petitioner filed Appeal under Section 53A of the said Act before the Respondent No.1.

3.9. Respondent No.2 addressed letter to the State Bank of India to freeze the Petitioner's bank account. Petitioner filed Writ Petition No.7969 of 2019 which was disposed of directing Respondent No.1 to decide the stay Application or Appeal expeditiously within three months. Petitioner was also directed to furnish a Bank Guarantee for an amount of Rs.1.5 Crore.

3.10. After hearing the Petitioner, Respondent No.1 passed the impugned order dated 15.10.2019 confirming the order dated 06.12.2018 passed by Respondent No.2.

4. Mr. Vashi, learned Senior Advocate appearing for the Petitioner would submit that on perusal of the office note at Exh. "O" (Page Nos. 104-105 to the Petition), it is clear that at the foot of the said office note, the Joint Sub-Registrar, Mulshi - 2 has made a handwritten endorsement to the effect that as the Appellant had produced remission certificate, remission in payment of stamp duty is correctly given to the Petitioner in accordance with the Government policy.

4.1. He would submit that the handwritten note has not been considered by the Joint District Registrar & Collector of Stamps, Paper Rural Pune 1 at all. If the same would have been considered, the decision would have been different. The Joint District Registrar & Collector of Stamps, Paper Rural Pune 1 has only given one singular reason in the impugned order stating that the Petitioner has shifted from one premises to another premises and therefore it is not entitled to remission in stamp duty.

4.2. He would submit that no show cause notice was given by the Joint District Registrar & Collector of Stamps, Paper Rural Pune 1 to the Petitioner. Petitioner was initially served with letter dated

19.10.2016, followed by letters dated 05.07.2017 and 26.02.2018 addressed by the Joint District Registrar & Collector of Stamps, Paper Rural Pune, 1 to the Director of industries inquiring as to whether the Petitioner is an existing unit or a new unit.

4.3. He would submit that on receipt of letter dated 19.10.2016 Petitioner's consultant visited the office of the Joint District Registrar & Collector of Stamps, Paper Rural Pune 1 on 18.11.2016 and 29.11.2016. Thereafter a personal hearing was requested. However, no show-cause-notice was served on the Petitioner nor any personal hearing was given.

4.4. He would further submit that Respondent No.1 and Joint District Registrar & Collector of Stamps, Paper Rural Pune 1 ought to have appreciated that the IT & ITES policy enunciated by the Respondent No.3 speaks about expansion. According to him once the certification is issued by the Director of Industries, the Joint District Registrar & Collector of Stamps, Paper Rural Pune 1 cannot in supersession thereof hold that Petitioner is not entitled to remission in payment of stamp duty as that would amount to overruling the certification issued under the Government policy.

4.5. He would submit that in the case of the subject 8 lease documents, the amount of stamp duty without benefit of remission would be approximately Rs. 3,56,35,153/-. As against that, Petitioner

has paid net stamp duty amounting to Rs.89,08,900/- with the benefit of remission under the Government policy. Therefore, the deficit stamp duty in any event would come to Rs. 2,67,26,253/- and not Rs.4.91 Crore as directed by the Joint District Registrar & Collector of Stamps, Paper Rural Pune 1.

4.6. He would further submit that the impugned order is contrary to clause 5(3) of the Maharashtra IT/ITES Policy, 2009 as also under the provisions of Section 32(a)(4) of the said Act. The Joint District Registrar & Collector of Stamps, Paper Rural Pune 1 does not have the power to pass the impugned order dated 06.12.2018 and thus it has been erroneously held that Petitioner is liable to pay the difference in stamp duty, which amounts to Rs.4,91,01,213/-.

5. **PER-CONTRA**, Mr. Kankal, learned AGP has raised serious objection to Petitioner's submissions and argued that the audit team of the Accountant General (II), Nagpur during its inspection has taken objection about short levy of stamp duty of Rs. 4,91,01,213/- on the ground that the remission granted in stamp duty was irregular in the present case.

5.1. He would submit that based on the audit report by the Audit team of the Accountant General (II), Nagpur, Respondent No.2 initiated action for recovery of deficit stamp duty under the provisions of the said Act. By order dated 06.12.2018, Petitioner was called upon

to deposit the amount of Rs.491.01 Lakh alongwith penalty under Section 39 of the said Act which is @ 2% p.m. Thereafter an appeal was filed by Petitioner under Section 53(1A) of the said Act and the same was rejected by order dated 15.10.2019.

5.2. He would submit that Petitioner has admittedly executed “sub-lease” documents and the notification / Government policy under which Petitioner had sought remission is not applicable to the case of “sub-lease” documents. According to him before registration of the transactions, Petitioner did not submit the documents for adjudication as required under Section 31 of the said Act and Petitioner on its own calculated the stamp duty relying upon the certificate issued by the Director of Industries and there was no certificate issued under Section 32 of the said Act. Hence eligibility of the Petitioner has not been tested at the time of registering the transaction documents and therefore as per the audit objection, Respondent No.2 has passed a correct order in accordance with law. He would submit that Petitioner is not eligible for remission in stamp duty as it does not fulfill the criteria for seeking remission. That Petitioner has bypassed and directly registered the transaction documents which is not permissible at least in the case of remission.

6. I have heard Mr. Vashi, learned Senior Advocate for the Petitioner and Mr. Kankal, learned AGP for the Respondents and with

their able assistance perused the record and pleadings of the case. Submissions made by the learned Advocates has received due consideration of the Court.

7. In the present case, the *lis* between the parties is with respect to grant of remission under the Government policy of 2009 for payment of stamp duty in respect of the setting up of IT & ITES industry. There is no dispute that the policy exists. Respondents in the impugned orders have held that any remission allowed by the State under any of its policies can be allowed only in respect of setting up of new IT & ITES industries and not to existing IT & ITES industries who desire or seek expansion. According to the State, the extant policy enunciated in the Government resolution of 2009 needs to be contemplated as above. In the present case, it is seen that on adjudication having been done and certified by Respondent No.3 State in the facts and circumstances of the Petitioner's case, Petitioner was granted remission of 75% stamp duty. Hence, in view thereof supersession of the certification issued by Respondent No.3 subsequently cannot be allowed in the manner and fashion in which the same has been done. The transaction documents are "leases" exceeding one year but less than 10 years. They are having different tenures between 5 & 10 years. That apart, Petitioner's grievance is

that on the basis of audit report prepared by the Accountant General (Audit), Respondent No. 2 has reopened Petitioner's case and adjudicated the same afresh without furnishing to the Petitioner the objection raised by the Accountant General (Audit) in its audit report as also without hearing the Petitioner and thus violated the fundamental principles of natural justice. It is pertinent to note that the certificate issued by the Respondent No.3 in respect of Petitioner's case on the Application of the extant remission policy of the State Government in respect of setting up of IT & ITES companies situated in SEZ has not been withdrawn or cancelled till date and the same still subsists. Petitioner has heavily relied upon the office note in the present case on the basis of which remission is allowed to the Petitioner. The said office note is annexed as Exh. "O" to the Petition wherein the Joint Sub Registrar, Mulashi – 2 has endorsed the remission in payment of stamp duty as having been correctly given to the Petitioner on the basis of the certificate produced by the Petitioner. Hence it cannot be argued that Petitioner has bypassed the procedural requirements and registered its transactions. In any event, Petitioner on its own cannot register its own transactions.

8. While passing the impugned orders, Respondents have invoked power under Article 36(2) read with 36(3) of the said Act. Admittedly on perusal of the said Articles, it is seen that such power

can only be invoked in the case of renewal of lease and leave and license transaction which are renewed for a period of more than 10 years. In the present case, admittedly all 8 documents of lease which are the subject matter of remission are in respect of lease period having tenure between 5 to 10 years and thus invocation of Article 36(2) is *prima facie* not applicable to the Petitioner's case.

9. In the present case, it is seen that the objections raised by the Accountant General (II), Nagpur for coming to the conclusion that Petitioner has been wrongly given / granted remission in payment of stamp duty on the transaction documents are in fact completely different than the reasons stated in the impugned orders passed by Respondent Nos. 1 and 2. The Accountant General (II) in the Office Note has raised an objection on the ground that Petitioner has taken different premises on lease in buildings which cannot be treated as an independent private IT Park and therefore is not entitled for satisfying the expansion investment criteria. The Accountant General has further opined that the certificate issued by the Directorate of Industries is irregular. The Petitioner has referred to the certification granted by the Directorate of Industries to the Petitioner on 02.09.2014 which is at Exh. "B" (Page No. 51 to the Petition) in this regard. It is pertinent to note that this certificate has been granted pursuant to the proposal and application of the Petitioner dated

28.01.2013 and 04.02.2013 to the Government of India for setting up a unit in the SEZ. It is further pertinent to note that the proposal and application clearly envisages setting up of unit in SEZ subject to the provisions of the Special Economic Zones Act, 2005 and the rules and orders made thereunder for establishment of the unit on the 5th, 6th, 7th and 8th office floors and Amenity Area in ITPP Phase-I CEDAR Bldg. located at Ascendas IT Park, Rajiv Gandhi Infotech Park, MIDC Phase-III, Hinjewadi, Pune 411 057 in the State of Maharashtra. The certificate issued by the Directorate of Industries, State Government of Maharashtra pursuant to the certification by the Government of India, Office of the Development Commissioner, SEEPZ Special Economic Zone clearly records that the Petitioner is entitled to remission of 75% of stamp duty and is eligible for the same. It needs to be noted that the certificate is issued pursuant to the approval granted by the Government of India dated 21.02.2013 (Exh. "C1", Page No. 52) followed by further approval dated 05.07.2013 (Exh. "C2", Page No. 55) and further approval dated 28.01.2014 (Exh. "C3", Page No. 57). The only distinction that needs to be determined in the present case is whether as per remission order for IT/ITES Policy 2009 whether remission is allowed to new IT/ITES units or expansion of units located in IT SEZ area or whether as in the present case of the Petitioner, the remission allowed for relocation / expansion of unit from Hinjewadi Phase – II to MIDC owned IT SEZ at Hinjewadi Phase

– III in the same Taluka Mulshi of Pune district without any change in terms and conditions of the LOA issued to the Petitioner can be permitted. At the first instance, it needs to be clearly understood that the relocation / expansion of Petitioner of its existing IT unit is from Hinjewadi Phase – II to MIDC owned IT SEZ at Hinjewadi Phase – III. Therefore, it cannot be construed that the expansion / relocation is taking place in a private building as opined in the Office Note objection prepared by the Accountant General (II) Nagpur. Next a question that would arise is whether the Petitioner is entitled to remission or otherwise. Record clearly shows that the certificate dated 02.09.2014 granted by Respondent No. 3 – Government of Maharashtra to the Petitioner (Exh. “B”) still subsists. Perusal of the said certificate clearly shows that copy of the same has been endorsed to the Sub-Registrar of Assurances Class I as well as District Collector of Stamps, Pune. Hence, as long as the certificate subsists, Respondent No. 3 cannot be heard to take a divergent stand in the present case.

10. It is an admitted position that the development and set up by the Petitioner is clearly covered by the Maharashtra IT and ITES Policy, 2009 and subsequently amended and made applicable thereafter. There is no dispute raised in that regard by the Respondents. It is clear that at the time of adjudication of the subject

8 lease transaction documents in the present case, the learned Joint Sub-Registrar Mulshi 2 has clearly endorsed that Petitioner has produced the remission certificate and in view thereof, remission has been clearly given in the Petitioner's case. This endorsement has been specifically made on the Office Note prepared by the Office of the Accountant General (II) Nagpur which was in fact brought to the notice of Joint Sub-Registrar Mulshi 2 at the time of adjudication. This clearly shows that the objection raised by the Audit Department of Respondent No. 3 was considered by the Registration Authority before the registration was effected. It is clearly seen that on all these counts, the objection raised by the Accountant General in respect of the Petitioner's case did not hold good in the facts and circumstances of the present case. It is clearly established that the Petitioner has taken special permission of lease in a SEZ area and the same in fact pertains to the expansion and investment made by the Petitioner of its existing IT business for which certificate has been granted by Respondent No. 3 after considering three approvals granted by the Development Commissioner on behalf of the Government of India. The reason given by the Joint District Registrar and Collector of Stamps, Paper Rural Pune 1 that merely because the Petitioner had shifted from one premises to another premises, the Petitioner is not entitled to remission in payment of stamp duty cannot be therefore countenanced. The certificate of remission issued by the Directorate

of Industries to the Petitioner is the fundamental basis for granting remission of 75% exemption in payment of stamp duty. So long as the certificate subsists and exists, Petitioner cannot be faulted for the same. For requiring the Petitioner to pay 100% stamp duty, the certificate of remission granted by the Directorate of Industries ought to have been revoked or challenged. Such is not the case pleaded by Respondent No. 3. Hence, during the subsistence of the said certificate of remission, it cannot be argued by Respondents that Petitioner is not entitled to remission in payment of stamp duty. Record further clearly shows that the subject 8 lease transaction documents are for a tenure between 5 to 10 years only. In view of the certificate of remission, the stamp duty payable on the said transaction documents would therefore be only to the extent of 25% of the market value as per the provisions of Article 36(2) of the said Act. According to the Petitioner, said 25% has been duly paid and it amounts to Rs. 89,08,900/-. I have carefully considered the documents relied upon by the Petitioner. The impugned order dated 15.10.2019 passed by Respondent No. 1 upholds and confirms the order dated 06.12.2018 passed by Respondent No. 2 – Collector of Stamps, Pune. Both the impugned orders proceed on the basis that the subject buildings where the Petitioner has shifted its operation / business premises cannot be treated as independent private IT Park and cannot be given benefit of a new unit in a private IT Park. As observed and alluded to herein

above, this proposition of the Respondents in the impugned order cannot be accepted. It is clearly seen that the buildings in which the subject premises has been taken on lease are in a SEZ area. The objection of the Respondents that the expansion which has taken place in the subject buildings cannot be treated as independent IT Park, is therefore rejected. Once the policy of the Government of Maharashtra clearly envisages that exemption is available for new IT/ITES units and expansion in private IT Parks, the Petitioner who has clearly expanded its business from the existing unit which was insufficient / inadequate for carrying out the said business is entitled for the benefit under the Government Policy. In fact, the Petitioner's case would be clearly covered under both the heads for seeking exemption in the present case. The existing unit of the Petitioner has been expanded to the subject premises in a SEZ area which has been taken on lease and considering the expansion of the business of the Petitioner, there is no dispute that the Petitioner's business has been shifted from Hinjewadi Phase – II to MIDC owned IT SEZ at Hinjewadi Phase – III in a larger premises. It is also not the case that the new premises i.e. Hinjewadi Phase-III is not in a SEZ area. It is pertinent to note that the remission policy is available for new IT/ITES units and also expansion in private IT Parks which includes IT hardware and telecom hardware manufacturing in A & B Areas on the instrument of the agreement etc. This is the provision under which remission is sought for by the

Petitioner on the basis of the certificate issued by Directorate of Industries. The policy further envisages 100% exemption from stamp duty to new IT/ITES units and expansion in public IT Parks in IT, IT hardware and telecom hardware manufacturing SEZ in other than “A” and “B” areas. The objection raised by the Respondents that there is no proof that the subject SEZ is IT manufacturing SEZ is unsustainable as the new premises are MIDC owned ITSEZ area.

11. In view of the above observations and findings, both the impugned orders dated 06.12.2018 (Exh. “I”) and 15.10.2019 (Exh. “L”) to the Petition deserve to be quashed and set aside. Both the aforesaid orders are therefore quashed and set aside. The Bank Guarantee No. 0986BGFD000720 given by the Petitioner shall be returned back to the Petitioner within a period of two weeks from today.

12. With the above directions, Writ Petition is allowed and disposed. Consequently, both the Interim Applications are also disposed.

[MILIND N. JADHAV, J.]

Digitally signed
by RAVINDRA
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