IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.08.2023

PRONOUNCED ON : .08.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.5521 of 2015
and
M.P.No.1 of 2015

1.Siemens India Limited,
No.4A, Ring Road, IP Estate,
New Delhi – 110 002,
India.
At Present
Seethakathi Business Centre,
4th Floor, 272/688,
Anna Salai, Chennai – 600 006,
Duly represented by
Ajay Francis Inigo Loyola, Contract Manager.

2.Siemens Aktiengesellschaft,
Nonnendammallee – 101,
Berlin – 136 629,
Germany.
At Present
Seethakathi Business Centre,
4th Floor, 272/688,
Anna Salai, Chennai-6,
Represented by
Ajay Francis Inigo Loyola. ...Petitioners

Vs.

1.Joint I Sub-Registrar,
DRO, Chennai Central,
Bharathi Salai,
Chennai – 600 014.

2.District Registrar (Admn.) (Addl. In-charge),
Central Chennai,
Chennai – 600 014.

3.The Inspector General of Registration,
No.100, Santhome High Road,
Mullima Nagar, Mandavalipakkam,
Raja Annamalai Puram,
Chennai – 600 028. ..Respondents

[R3 *suo-motu* impleaded vide order dated
01.08.2023 made in WP.No.5521 of 2015]

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the 2nd respondent, District Registrar (Admn.) (Additional-in-Charge), Central Chennai, Chennai – 600 014 ending in the Order No.10037/A1/2014 dated 24.11.2014 of the said Authority that confirmed the Certificate dated 05.06.2014 issued by the 1st respondent, Joint I Sub-Registrar, Central Chennai, and to quash the same.

For Petitioners : Mr.G.Masilamani
Senior Counsel For Mr.Jose John
and Mr.M.Narendran
For M/s.King and Partridge

For Respondents : Mr.S.Silambanan
Additional Advocate General
Assisted by Mr.G.Krishna Raja
Additional Advocate General

O R D E R

The lis on hand has been instituted questioning the validity of the order passed by the District Registrar Central Chennai in proceeding dated 24.11.2014 confirming the certificate dated 05.06.2014 issued by the first respondent.

PETITIONER's CASE:

2. The first petitioner is Siemens Limited incorporated under the Companies Act, 1956. The second petitioner is a foreign company and has its registered office at Siemens AG, Ackerstrasse 22, 38126 Braunschweig, Germany.

3. The petitioners successfully tendered for the Chennai Metro Rail Limited (CMRL) contract to design and build Signalling, Platform Screen

Doors and Telecommunication equipments. The petitioners therefore formed an open consortium for executing and performing the contract for Package No.10, The petitioners expressly agreed that the participation of each of them in the consortium was with a clear understanding that no corporation, joint venture relationship or any form of partnership or association of persons shall be established and the arrangement between them should not be interpreted as any agreement or arrangement to share either the revenue or profits arising to each of the petitioners separately from execution of the project. The petitioners further agreed in the Consortium Agreement that it was not their intention to share any profits. The Consortium Agreement did not contain any price consideration as it was merely an agreement to cooperate, execute and perform the contract with Chennai Metro Rail Limited (CMRL) to design and build Signalling, Platform Screen Doors and Telecommunication equipment. The contract with CMRL was for the design and build of Signalling, Platform Screen Doors and Telecommunication equipment. It was a separate agreement and was neither incorporated by reference nor made part of the Consortium Agreement. The contract awarded by CMRL was a standalone and self-contained agreement distinct from the Consortium Agreement.

4. The petitioners presented the Consortium Agreement on 09.03.2011 in the office of the District Registrar of Central Chennai for registration. The Consortium Agreement as well as the contract with CMRL are not instruments, the registration of which are compulsory under Section 17 of the Registration Act, 1908. The consortium Agreement was, however, presented for registration at the request of CMRL and was registered as Document No.99 of 2011. The contract with CMRL was not presented for registration.

5. The petitioners paid stamp duty of Rs.100/- for Consortium Agreement and the Registration Officer charged Rs.220/- towards registration fees for the Consortium Agreement. The Registration Officer also released the Consortium Agreement after registration.

6. The petitioners had received a show cause notice dated 06.03.2014 from the first respondent asking the petitioner to appear before the first respondent for an inquiry on 19.03.2014 to put forth the defence statement with documentary evidence to show cause, as to why the deficit registration

fees of Rs.9,28,43,000/- should not be collected under Article 1(b) of the Table of Fees under the Registration Act. The deficit registration fees was claimed in respect of Document Nos.85/2011 and 99/2011.

7. The Consortium Agreement executed by the petitioners was registered as Document No.99 of 2011. However, the Document No.85/2011 referred in the show cause notice did not concern the petitioners. The petitioners have stated that they have never executed any document that was registered as Document No.85/2011.

8. The main contentions of the petitioners are that the show cause notice issued by the respondents was barred by the period of limitation under Section 80-A of the Registration Act, and no inquiry could be commenced three years after the date of registration of the document. In the present case, the Document No.99 of 2011 was registered on 09.03.2011 and the postal endorsement of dispatch of the show cause notice was dated 10.03.2014 and therefore, the show cause notice itself was barred by limitation. In respect of Document No.85 of 2011 dated 17.02.2011, the petitioners have stated that the said document is nowhere connected with the

petitioners and the authorities have issued show cause notice in respect of the said Document No.85 of 2011 without any application of mind.

9. The petitioners came to understand that the deficit registration fees was claimed based on the audit observation. According to the Auditor, the Consortium Agreement was for the joint execution of projects related to CMRL and that as per the records obtained from CMRL, the value of the contract worked out to Rs.928.43 Crores and that the Table of Fees under Section 78 of the Registration Act, 1908, read with clause 1(C) of that Table of Fees at 1% on Rs.928.43 Crores was required to be collected for registering the agreement and that omission to do so had resulted in short levy of registration fees amounting to Rs.9,28,43,000/-.

10. The petitioners have defended their case in respect of Document No.99 of 2011 as they disown the Document No.85 of 2011. However, the first respondent, without considering the period of limitation and the other grounds raised by the petitioner, issued the certificate under Section 80-A of the Act on 05.06.2014. The petitioners filed a statutory appeal before the second respondent on 01.08.2014. The second respondent confirmed the

certificate issued by the first respondent in proceeding dated 24.11.2014 which is impugned in the present writ petition.

ARGUMENTS OF THE PETITIONERS:

11. The learned Senior Counsel appearing on behalf of the writ petitioners mainly contended that the registration fees has been paid properly under Article 1(g) of the Table of Fees as the Consortium Agreement did not contain any price consideration and it was not connected with the contract with CMRL. However, the respondents followed the audit objections to collect the registration fees under Article 1(b) of the Table of Fees. The demand for Rs.9,28,43,000/- as registration fees is exorbitant as the Consortium agreement was registered for the cooperation and execution of contract and cannot have any value. The contract to supply equipment and services with the CMRL was a separate contract and therefore, the impugned certificate and the appellate order are unsustainable and are in violation of the rules of limitation.

12. The learned Senior Counsel appearing on behalf of the petitioners, mainly relied on the nature of the recitals in the Consortium Agreement

agreed between the parties. Relying on the terms in the Consortium Agreement, it is contended that there is no price value or any indication to that extent and thus, the registration fees paid under Article 1(g) is proper and the audit objection raised and the show cause notice issued beyond the period of limitation are in violation of the Registration Act. The agreement unambiguously indicates that it is not a joint venture and the very purpose and object of the Consortium Agreement is to expand cooperation between the parties and to execute the contract already entered into with CMRL separately, which is not registered. In respect of the Document No.85 of 2011, the authorities have not applied their mind since the said document is nowhere related to the petitioner's company.

13. Regarding the period of limitation, the learned Senior Counsel for the petitioners drew the attention of this Court with reference to the date of issuance of the show cause notice under Section 80-A of the Registration Act i.e. 06.03.2014. However, the said notice was dispatched on 10.03.2014 and thus, the show cause notice was issued beyond the period of limitation and thus, the consequential certificate and the appellate order is to be set aside. The learned Senior Counsel referred the explanations submitted by the

petitioners on the show cause notice. The said explanations have been submitted broadly concentrating on two aspects. Firstly, the show cause notice was issued beyond the period of limitation and thus, untenable. Secondly, the Consortium Agreement has no value nor there is any indication of price value and thus, it is incapable of valuation and not compulsorily registrable. Thus, the registration fees initially paid by the petitioner i.e. Rs.220/- is proper and in consonance with the provision of the Registration Act. Thus, the claim set out in the show cause notice, pursuant to the audit objections under Article 1(b) of the Table of Fees under the Registration Act, is inapplicable as far as the Consortium Agreement registered by the petitioner is concerned.

JUDGMENTS RELIED ON BY THE PETITIONERS:

14. The learned Senior Counsel for the petitioners in support of the above contentions, relied on the Full Bench judgment of the Andhra Pradesh High Court in the case of **A.Bapiraju and others vs. District Registrar, Registration and Stamps, Srikakulam**, reported in **AIR 1968 Andhra Pradesh 142**. The Full Bench made the following observations:

> *"8.The contention on behalf of the Government is*

that the compromise decree and the power of attorney read together amounted to a mortgage with possession and though styled a power of attorney it should be stamped as a mortgage with possession.

...

12. We shall now refer to some of the leading decisions on the point.

13. In an old English case reported in Limmer Asphalte Paving Company Limited v. Commissioner of Inland Revenue the question for consideration was whether the document (in that case, a conveyance of sale) was chargeable with stamp duty as a conveyance. It was held that for that purpose the real and true meaning of the instrument had to be ascertained, and that the description of it given in the instrument itself by the parties is immaterial even though they may have believed that its effect and operation was to create a security mentioned in the Stamp Act, and they so declared. It was observed:

> *"The question therefore, stamp or no stamp, and if a stamp to what amount is to be determined upon the real and true character and meaning of the writing. It is sufficient to refer to the case of Rex v. Inhabitants of Ridgwell,(1827) 6 B & C. 665) to establish this*

proposition.

14. In the Commissioner of Inland Revnue v. C. Angus and Co. , the Commissioners of Inland Revenue held that advalorem stamp duty ought to be paid on the instrument as a "conveyance of transfer on sale". The Divisional Court having overruled that opinion, the appeal came before the Court of Appeal. The contention advanced before it was that the instrument was a conveyance on sale, within the meaning of section 70 of the Stamp Act of 1870 in England. Lord Fsher, M.R. held that the first thing to be noticed was that the thing made liable to the duty was as instrument, and that if a contract of purchase and sale, or a conveyance by way of purchase and sale, can be or was carried out without an instrument the case was not within the section and no tax was imposed. His Lordship observed:

> *"It is not the transaction of purchase and sale which is struck at; it is the instrument whereby the purchase and sale are effected which is struck at. And if anyone can carry through a purchase and sale without an instrument, then the legislature have not reached that transaction the next thing is that it is not every instrument which may be brought into being in the course of a transaction of purchase and sale which is*

> *struck at, It is the instrument whereby any property upon the sale thereof is legally or equitably transferred. The taxation is confined to the instrument whereby the property is transferred. The transfer must be made by the instrument. If a transfer requires something more than an instrument to carry it through, then the transaction is not struck at, and the instrument is not struck at because the property is not transferred by it."*

His Lordship further observed:

"I come therefore to the conclusion first that, if this instrument is an agreement of which specific performance would be immediately granted still it is only an agreement. Something more is required to convey the property. Secondly, I doubt very much whether immediate specific performance would be decreed of the agreement as regards the goodwill. The truth is that the goodwill of the business will pass to the purchasers not by this instrument, but as soon as the real estate to which the goodwill is attached has passed to them; the moment the real estate is conveyed to them, the goodwill will pass to them. It will not pass to them by this agreement alone; it will pass by the conveyance of the real estate which is contemplated as something subsequent to this agreement. And thirdly, I think that, if the purchasers chose to rest upon this

agreement, and possession is given to them of the premises, of the business and of the goodwill, and they are not interfered with for the next twenty years, that can make no difference; it is only when they proceed to a "conveyance" properly so- called that this stamp duty attaches. In my opinion, the judgment of the Divisional Court was right, and these appeals must be dismissed. The construction which I have put on Section 70, will I think give a distinct and clear meaning to the words which for some time puzzled me "legally or equitably transferred"; the word 'legally' applied to the legal transfer of a legal right, and the word 'equitably' applies to an equitable transfer of an equitable interest,"

15. In Minister of Stamps v. Annie Quayle Towaned the facts were that the testator some years before his death executed a power of attorney in favour of his daughter, the respondent and by a verbal gift in order to escape taxation, authorized her to appropriate the purchase- moneys received thereunder of lands sold by him and of mortgage money due to him, to relend the latter to the mortgagors in her own name and generally to invest his moneys in her own name. The question was, whether the gift to the daughter was liable to be charged with duty. It was held *that under the New Zealand Stamp Act, and Section 35 of the New Zealand Deceased Persons Estates Duties Act, 1881, the gift to the daughter being verbal could not be stamped, and that the deeds executed in carrying out the transaction of gift were not deeds of gift within the meaning of the New Zealand Stamp Acts, and did not operate a disposition of property within the meaning of Section 35 of the New Zealand Deceased Persons' Estates Duties Act. Lord Loreburn, Lord Chancellor, who spoke for the Judicial Committee of the Privy Council, found that the testator intended to give, and did effectively give to his daughter large sums of money during the later years of his life, and that he deliberately intended to part with as much of his property as he safely could in her favour in order to escape payment of taxes either during his life or after his death. It was observed that the gift effected in favour of the daughter was carried out by two deeds which did not themselves convey anything to the daughter, but what was conveyed to her was the authority emanating from the testator that she could have the moneys received by her under the power of attorney for herself, and that authority being oral could not be stamped. The Lord Chancellor approved the observations of the learned Chief Justice of the Supreme Court of New Zealand that the statute taxes* *instruments, and does not tax transactions, and that as there was no gift by any document, there was no duty payable under the State Duties Act.*

16. A Full Bench of this Court in Bharpet Mohammad Hussain Saheb v. District Registrar, Kurnool had to consider whether a particular document was an agreement of agency or a mortagage. In that case, applicant No. 1 executed on 6th June, 1958 a deed of simple mortgage for Rs. 1,00,000/- in favour of Andhra Cotton Co., Secunderabad paying a stamp duty of Rs. 1,500/- Two days later an agreement was executed by applicant No. 1 in favour of applicant No. 2 appointing the latter as his agent for managing the ginning and the pressing factory at Adoni, engrossing the document on a stamp paper of Rs. 37-50, under Article 6 of Schedule I-A of the Stamp Act. When it was presented for registration the question arose whether it constituted an usufructuary mortgage chargeable with duty under Article 33(a) of Schedule I-A of the Central Act. The Board of Revenue was inclined to take the view that the two documents constituted a deed of mortgage with possession, but submitted the case under Section 57 of the Act for the decision of the High Court, Chandrareddy C.J., who spoke for the Court after citing *the decisions in Commissioner of Income Tax v. Ibrahimsa , Pathumma Umma v. Mohideen , Bank of Chettinad Ltd. v. Commissioner of Income Tax , Inland Revenue Commissioners v. Westminister and Partition v. The Attorney General held that due regard must be had to the form adopted by the parties and not to the substance of the matter, and that the court could not enter into the spirit of it for the purpose of deciding whether it falls within the ambit of Article 33(a) or 33(b) of Schedule I His Lordship observed:*

"Another principle that is to be borne in mind in the context of this enquiry is that it is the instrument that is presented for registration that should be taxed. We cannot read a number of documents to see if a particular transaction is spread over all these instruments. We have to take into account the nature of the document that is sought to be taxed".

The learned Chief Justice extracted the observations of Loreburn. L.C. in Minister of Stamp v. Annie Quayle-Townend with approval and held that it is only the instrument that is presented for registration that is charged with stamp duty, and that the authorities cannot look into *various documents that are connected with it with a view to judge the nature of the transaction that is covered by this document read in conjunction with several others. Accordingly, it was held that the first document was a simple mortgage falling under Article 33(a) and the second was an instrument attracting Article 6 of that Act. The learned Chief Justice observed that even if it was assumed that the parties adopted the device of resorting to two documents with a view to avoid stamp duty, that was beside the point.*

17. In Board of Revenue, Madras v. N. Narasiman a similar principle was laid down by a Full Bench or the Madras High Court, and it was held that the Revenue Authorities cannot say that the object of the transaction was to achieve a purpose not disclosed in the document, and that, therefore, the document should be deemed to be that which it is not. It was also laid down that the true scope of the rule of substance prevailing over the form with reference to a document chargeable to stamp duty was that the recitals therein should not be lost sight of merely because the parties gave a particular description of the nature of the document.

18. Having regard to the recitals in the compromise decree and the power of attorney referred to above, it is manifest that the charge in the mines and the ore was created by the said decree, and the agents were put in possession of the mines and the ore by virtue of the same. The compromise decree itself provided for an irrevocable power of attorney being executed in favour of the agents for working the mines and paying themselves the net sale proceeds and the applicants not creating any charge or mortgage or lien over the properties. A reference to or a repetition of these clauses and the conditions relied on by the Board of Revenue in the power of Attorney would not alter its character, or the nature of the document. It may be mentioned that all other terms are those usually found in a contract of del credere agency. As a result of the rights acquired under the two documents, it may be that the agents have been enabled to treat the mines and the ore as security for the realisation of the debt due to them as if it were a mortgage with possession. But that is looking at the substance of the transaction resulting from both the documents a course which is not permitted in law for determining the stamp duty. As noticed above, whether the document is liable to the stamp above, whether the document is liable to stamp duty or not has to be decided *only by a reference to the form and nature of the document and its recitals. Applying this test, the document in question cannot be said to be a mortgage with possession.*

19. Mr. Sambasiva Rao, the learned Government Pleader contended that the parties resorted to a compromise decree and a contemporaneous power of attorney only with a view to evade payment of the stamp duty on a mortgage with possession. But that is a situation which cannot be helped. As observed by Chandra Reddy C.J., in Bharpet Mohammed Hussain Saheb v. District Registrar, Kurnool there could be no impediment to a party adopting a particular form to minimise the expense of stamp duty and if the parties are entitled under law to take advantage of any camouflage for the purpose of avoiding higher duty, they cannot be penalised for taking advantage of the letter of the law."

15. The Full Bench held that, whether the document is liable to stamp duty or not has to be decided only with reference to the form and nature of the document and its recitals.

16. In the case of the **Chief Controlling Revenue Authority, Board**

of Revenue, Madras vs. Dr.K.Manjunatha Rai, reported in **AIR 1977 Madras 10(1),** the Full Bench of this Court held as follows:

> "*15. For holding that the document in question is a conveyance the Board of Revenue did not rely so much on the recitals which that document contained. The Board, embarked, instead, on an examination of the original sale deed dated 14th March, 1947, under which the respondent purchased the whole extent of 27 grounds in Mount Road. According to the Beard, this document dated 14th March, 1947, did not say that the consideration for the purchase of the property was, in part, provided by the wife. The Board expected that such a recital sought to have been put in the purchase document, if the intention had been that the purchase was to be for the joint benefit of both the husband and wife. From this the Board purported to draw the inference that the respondent alone was the sole purchaser of the entire extent of the property of 27 grounds. From this it was but a short hop for the Board's conclusion that what the respondent did under the document dated 29th April 1970 was only to part with, or transfer, a portion of his own property in favour of his wife. We do not subscribe to the method of adjudication of stamp duty which the Board had*

followed in this case. It is true that what name the parties choose to give to an instrument cannot be decisive, or even indicative of the true nature of the instrument for purpose of stamp duty. But this rule does not mean that the revenue is empowered to go behind the recitals and terms of the document before it and hold that the object of the transaction was something different from what the document discloses and therefore the document should be deemed to be that which it is not. We do not think that the Revenue Authorities can ignore the terms of the document which is before them for adjudication and base their decision on the terms of some other collateral instrument. At all events, even according to the Board, the purchase document dated 14th April 1947, was silent as to how and where the purchaser formed the consideration which he passed to the vendor. In this situation, the release deed dated 29th April 1970 was the only instrument to which the Board should have directed its attention. It was not open to the Board to question the recitals in the release deed in the absence of any materials to the contrary. The same remark must apply to the Board's observation that the assignment by the Government of the adjacent property in favour of the respondent did not show that it was obtained for the benefit of the respondent and his wife jointly. We do not also *subscribe to the view that the respondent's wife was merely in the position of a lender of moneys with reference to a portion of the consideration that went in for purchase of the property. We hold that the respondent's wife had acquired a joint interest along with him in the property; and the appropriate method by which the respondent could renounce his claim over the interest of his wife was by execution in her favour of a release, as had been done under the document dated 29th April 1970.*

17. Relying on the said judgments, it is contended that the Revenue Authority is not empowered to go behind the recitals and terms of the documents holding that the object of the transactions was something different from what the document disclosed and therefore, the document should be deemed to be that which it is not. The Revenue Authorities cannot ignore the terms of the document which is before them for adjudication and place their decision on the terms of some other collateral instruments.

18. In the case of **D.B.Prakashchand Jain vs. The Inspector General of Registration, Santhome High Road, Chennai**, reported in **2014 SCC Online Mad 460**, the Apex Court held as follows:

"9. In writ petition W.P. No. 23618 of 2012, the petitioner therein presented Settlement Deeds for registration before the third respondent. In W.P. No. 25268 of 2012, the petitioner therein presented the Sale Deeds for registration before the third respondent. In respect of the documents presented for registration in both the matters, the Sale Certificate issued by the Mumbai Debts Recovery Tribunal-I dated 26.10.2004 in favour of D.B. Prakashchand Jain, who is the petitioner in W.P. No. 23618 of 2012 is the parent document. Now, the first respondent through the impugned order in W.P. No. 25268 of 2012 directed the third respondent to require production of the said Sale Certificate, impound the same, collect the deficit stamp duty on the said Sale Certificate and until then, he directed those documents presented for registration to be kept as pending registration documents. Therefore, the issue involved in both these writ petitions is one and the same, which is as follows:

Whether the Certificate of Sale issued by the Debts Recovery Tribunal, Mumbai dated 26.10.2004 is liable to be impounded for collecting the deficit stamp duty and whether the documents presented by the petitioners in these writ petitions are liable to be kept as pending documents till impounding of the said Sale Certificate and *for collection of deficit stamp duty. In this connection, the decision relied on by the learned counsel for the petitioner reported in (2007) 5 SCC 745, (cited supra) is relevant to be quoted, since the said decision answers the above issue. At paragraph No. 12 of the said decision, the Hon'ble Supreme Court has observed as follows:*

...

12. From the above decision of the Apex Court, it is clear that the Sale Certificate issued by the Mumbai Debts Recovery Tribunal does not require registration and it is merely evidencing the title of the property in favour of the purchaser, who got such title in pursuant to the Court auction.

...

14. In my considered view, the above decisions relied on by the learned counsel for the petitioners are squarely applicable to the case on hand. Moreover, the sale certificate is only a parent document in so far as the documents which are sought to be registered before the third respondent. Admittedly, the said Sale Certificate was not sought to be registered by the petitioners. I wonder as to whether the respondents are entitled to insist upon the production of parent document in respect of the documents *sought to be registered and impound the same for payment of deficit stamp duty, even assuming such parent documents require registration. In my considered view, the Registering Authorities are not entitled to go into the validity of the title to the property conveyed and sought to be registered. At any event, in this case, the sale certificate was issued by the Mumbai Debts Recovery Tribunal and consequent upon such purchase, the Settlement Deeds and Sale Deeds were executed by the purchaser of the property through the said Sale Certificate.*

15. It is held by the Apex Court in the above decision made in (2007) 5 SCC 745 (cited supra), that the Sale Certificate does not require registration. Consequently, the respondents are not entitled to seek for production of the said Sale Certificate for impounding the same for payment of deficit stamp duty. Accordingly, I am of the view that the impugned action in both the writ petitions are liable to be set aside and accordingly, they are set aside. Consequently, the writ petitions are allowed and the third respondent in both the writ petitions is directed to complete the registration of the documents presented for registration by the petitioners bearing P. Nos. 26 of 2011 to 37 of 2011 and P. Nos. 20 of 2011 to 37 of 2011 *respectively, within a period of three weeks from the date of receipt of a copy of this order. No costs. The connected miscellaneous petitions are closed."*

19. The findings in the above judgement is that when the respondents insisted upon the production of the parent document in respect of the document sought to be registered and impugned the same for payment of deficit stamp duty, the High Court held that the registering authorities are not entitled to go into the validity of the title of the property conveyed and it is sought to be registered.

20. In the case of **O.N.S.Hyder Ali vs. The Sub Registrar**, reported in **2002 SCC Online Mad 449**, this Court held as follows:

"5. A combined reading of the above provisions would make the position clear that in the event the respondent is of the opinion that there was a deficit in collection of either the stamp duty or the registration fee, an inquiry could be made within a period of three years. However, admittedly, the sale deed in this case was registered on 4.10.91 and the document has been released on 30.10.91. The impugned order does not bear any date.

However, the learned counsel for petitioner produced the copy of the cover by which the impugned order was despatched to the petitioner. The postal seal evidences the despatch of the said letter only on 21.2.95 which was received by the petitioner on 22.2.95. The despatch of the said letter, in the absence of specific date in the impugned order, should alone be taken into consideration for the purpose of calculation of the period of limitation for the inquiry to be initiated. That apart, the grievance of the petitioner is that there was no such enquiry at all initiated and only the impugned order directing the petitioner to pay the stamp duty and registration fee has been made. The said impugned order has been made beyond a period of three years. The respondent has no authority to initiate either the inquiry or make a demand in respect of the payment of stamp duty as well as registration fee beyond a period of three years of the registration. In that view of the matter, I find that the impugned order cannot be sustained in the eye of law. Moreover, there is no inquiry whatsoever conducted before such impugned order was passed. In the absence of inquiry, the order is also opposed to Section 33-A of the Indian Stamp Act, 1899 and Section 80-A of the Registration Act, 1908."

21. In order to support the contentions of the period of limitation in the above judgement, the Court held that in case of deficit collection of stamp duty or registration fees, any inquiry has to be made within three years. On exceeding the period of three years, the registration authorities neither has the authority to initiate inquiry nor can demand any payment of stamp duty or registration fees.

22. Placing reliance on the above judgements, the learned Senior Counsel for the petitioners reiterated that in any angle, the show cause notice issued by the respondents are beyond the period of limitation i.e., three years and thus, on that sole ground, the orders impugned are liable to be set aside. Even otherwise, the Consortium Agreement is incapable of valuation and is intended for cooperation between the parties for the purpose of executing the contract already entered with CMRL by the petitioners.

RESPONDENT'S ARGUMENTS:

23. The learned Additional Advocate General appearing on behalf of the respondents strenuously objected the contentions raised by the petitioners mainly on the ground that the recitals in the consortium

agreement has been drafted cleverly by suppressing material factors. The implications of the Consortium Agreement and the purpose and object of the agreement registered is unambiguous, involving financial transactions. The price consideration is identifiable on careful reading of the Consortium Agreement. Further, Document No.85 of 2011 was also registered by the petitioners, which they have wrongly denied. In this context, the learned Additional Advocate General furnished the copy of the document registered as Document No.85 of 2011 and on receipt of the said document, the petitioners thereafter agreed and filed an Additional Affidavit conceding the fact that the Document No.85 of 2011 was registered by them and inadvertently they have stated as if they are unconnected with the said document. In this context, the affidavit filed by Mr.S.T.Balayogeshwaran, who is the learned Senior Counsel – Commercial Law (Mobility & Corporate) in the petitioner Company states that Mr.Anupam Arora after going through the document confirmed that he had executed the document. However, he said that the document was not accepted by CMRL and wanted a shorter, revised Consortium Agreement and hence, the said document was not acted upon. It was informed by Mr.Anupam Arora, since CMRL refused to accept Document No.85 of 2011 on some technical reason, another

Consortium Agreement Document No.116 of 2011 dated 25.03.2011, for the same purpose had been executed and registered. A copy of the said document is produced.

24. The petitioners realised their mistake in disclaiming the knowledge of the said Document No.85 of 2011. They admitted their mistake and tendered apology for making a mistake of fact. However, the petitioners have stated that they have no other intention to disclaim the knowledge of the said Document No.85 of 2011. On merits even the said documents with reference to the show cause notice was registered before three years from the date of show cause notice and at the outset, the show cause notice is barred by the period of limitation.

25. The learned Additional Advocate General mainly contended that the show cause notice is within the period of limitation and the recitals in the Consortium Agreement would also indicate the price value and therefore, the value of the contract has been taken into consideration for collecting the registration fee under Article 1(b) and consequentially the certificate was issued. Thus, there is no infirmity.

26. The Consortium Agreement was reached for executing the Metro Rail Project of the Chennai Metro Rail Limited together by the two companies. In the said agreement it is provided as follows:

> *"The Parties expressly agree that each party participates in the project with the clear understanding that no corporation or any form of partnership or association of persons shall be established and that the present arrangement between them cannot be interpreted as any agreement or arrangement to share either the revenues or profits arising to each Party separately from execution of the Project."*

27. Article 1(g) provides "In the case of a document in which the transaction is not susceptible to money valuation, the key variable shall be of Rs.100.

28. Based on the above clauses, the registering authority registered the document by collecting Rs.100/- as registration fees. However, the State Accounts Officer audited the said document and in his report he has stated

that two companies have entered into an agreement for executing the contract given by the Chennai Metro Rail Project together and that it can be noted from the registers of CMRL, the value of the contract given to two companies is Rs.304.43 crores. The registration fee of Rs.3,04,43,000/- has to be collected under Article 1(c) of the Schedule of the Fees for the said amount. Thus, the show cause notice dated 06.03.2014 was issued to the petitioners with reference to the Document No.85 of 2011. The respondents have relied on the date of audit report of the state accounts answer i.e., on 24.10.2011 and therefore, the show cause notice was issued within the period of limitation. The proceedings commenced under Section 80-A of the Registration Act on the date of the Audit Report and thus, the show cause notice is well within the period of limitation. The petitioner preferred an appeal which was also rejected.

29. The learned Additional Advocate General further pointed out that the reliance placed on by the petitioners regarding the registration of the document is incorrect. The petitioners have calculated the period of limitation from the date of presentation of the document, but Section 80-A stipulates that the period of registration is to be taken into consideration for

the purpose of reckoning the period of limitations. Thus, the calculation adopted by the petitioners is incorrect.

30. The Additional Advocate General drew the attention of this Court with reference to the recitals in the consortium agreement, where there is a specific reference about the tender document and Clause 1.18 of the Consortium agreement registered vide Document No.85 of 2011 which stipulates that “Project” means “Chennai Metro Rail Limited, Package No.8 Traction/Substation (Power Supply System and Overhead Equipment) Design and Build” (Tender AEP-01). The Document No.85 of 2011 was registered on 25.02.2011. The seal has been affixed indicating the date of registration.

31. The Annex to the Consortium Agreement speaks about allocation of work, wherein, it is stated that “Following is the scope matrix for List of Responsibilities between Siemens Limited India and Siemens AG, Germany for the Chennai Metro AEP-01 Tender”. The List of Responsibilities with reference to AEP-01 Tender would be sufficient to form an opinion that there is a price value and such price value is available in the contract with

the Chennai Metro Rail Limited. Suppressing all these facts, the petitioners have drafted the Consortium Agreement in such a manner without indicating the price value, but by quoting the tender where from the audit party could cull out the fact that Consortium Agreement has price value.

32. The petitioners have suppressed the facts relating to the price value and misled the Registering Authority and registered two Consortium Agreement by paying the registration fees of Rs.100/- each under Article 1(g) of the Act. The audit party found that the registration was done by suppression of facts and by misleading the Registering Authority and accordingly, issued certificate for collecting the registration fee under Article 1(b) of the Act, as the contract value could be secured from the contract entered into between the petitioners and the CMRL.

33. The second Consortium Agreement registered vide Document No.99 of 2011 was registered on 17.03.2011. In the said document Clause 1.8 of the Consortium Agreement states that "Project" means "Chennai Metro Rail Limited Package No.10 for Signalling, Platform Screen Doors and Telecommunications Design and Build" (Tender: ASA-01). With

reference to the said tender the audit parties could find out the price value of the document. In the said document also there is an annex, which states that "Following with the scope matrix between Siemens AG of Germany (SAG) and Siemens Limited (SL) of India for the Chennai Metro Rail Limited, Contract ASA-01.

34. Since the price value is identifiable and the petitioners have suppressed certain vital facts in the Consortium Agreement in order to evade payment of registration fees, the authorities issued a certificate to recover the registration fees and there is no infirmity as such. Thus, the writ petition is to be rejected.

DISCUSSIONS:

35. The audit authorities had conducted an audit from 24.10.2011 to 04.11.2011 in accordance with law. They have mainly relied on the tenders awarded by the CMRL, which reveals that CMRL Contract Procurements Awarded Contracts from January 2022 to January 2023. In the said document, the Tender No.ASA-01 is found in S.No.74 and the name of the firm has been stated as M/s.Siemens Aktiengesellschaft Germany and Seimens Limited India Consortium. The amount involved has been stipulated as Rs.627.13/- Crores. Similarly, tender No.AEP-01 is found in S.No.77 and the name of the firm is M/s.Seimens, AG and Siemens India Limited Consortium and the amount involved is Rs.304.43/- Crores.

36. Relying on the tender awarded by CMRL and the Consortium Agreement, which contains tender quotes, the authorities found that the price value is identifiable and the petitioners have suppressed the said fact and registered the document by paying Rs.100/- per document.

37. Section 60 of the Registration Act speaks about the certificate of registration. Sub Section (1) states that "further such of the provisions of

Sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered" together with the number and page of the book in which the true copy of the document has been filed". Therefore, the documents presented by any person became valid only after its registration and issuance of the certificate of registration under Section 60 of the Registration Act. Once the seal is affixed as "registered", the document came into effect. Thus, the date of registration would be relevant for all purposes for the purpose of collecting the deficit registration fees, which was escaped during the course of scrutiny of the documents or at the time of registration.

38. Section 80-A stipulates Recovery of Deficit Registration fee. Sub Section (1) states that "Not withstanding anything contained in Section 80, if after the registration of the document, it is found that the fee payable under this Act in relation to that document has not been paid or has been insufficiently paid, such fee or the deficit, as the case may be, may, on a certificate of the registering officer, be recovered from the person who presented such document for registration under Section 32, as arrears of

land revenue:

Provided that no such certificate shall be granted unless 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 such period, after the date of the registration of the document, as may be prescribed".

39. The first proviso to Section 80-A indicates that an opportunity is to be granted to the person against whom certificate has been issued for recovery of deficit registration fee. Second proviso Clause indicates that no such inquiry shall be commenced after the expiry of such period, after the date of registration of the document. The time limit has been contemplated under Rule 2 of the Tamil Nadu Registration Rules, 1983. Rule 2 indicates that "No inquiry under first proviso to Sub-Section (1) of Section 80-A shall be commenced after the expiry of a period of three years after the date of registration of the document, or in, the case of collection of stamp duty under Section 47-A of the Indian Stamp Act, 1899 (Central Act II of 1899) after one year from the date of such collection, whichever is later".

40. Rule 2 unambiguously stipulates "No inquiry under first proviso to Sub-Section (1) of Section 80-A shall be commenced after the expiry of a period of three years after the date of registration of the document". Therefore, the date of registration is to be taken for reckoning the period of limitation. On registration, seal is affixed in the document stating that the document is "registered". Rule 2 stipulates that the period of limitation starts after the date of registration of a document. Therefore, the limitation should be reckoned from the date of registration.

41. Even Section 33-A of the Indian Stamp Act, 1899 the 2nd proviso Clause states that no such inquiry shall be commenced after the expiry of date of registration of the instrument. Therefore, even under the stamp Act, the date of registration is to be reckoned for the purpose of calculating the period of limitation and undoubtedly not from the date of presentation of document for registration. Thus, for the purpose of recovery of deficit stamp duty, the date of registration of the document is to be taken into consideration for the purpose of reckoning the period of limitation under the Act.

42. In the present case, the show cause notice was issued by the respondents to the petitioners in proceeding dated 06.03.2014. No doubt, the show cause notice was despatched on 10.03.2014 as per the postal receipt. However, Section 80-A stipulates that no inquiry shall be commenced after the expiry of such period after the date of registration of the document. Thus, the commencement of inquiry must be within the period of three years from the date of registration.

43. Question arises, whether the date on which the show cause notice has been issued by the competent authority is to be taken for reckoning the period of limitation or the date of despatching of the show cause notice through Postal Department.

44. The despatch seal affixed by the Postal Department is to be taken into consideration to find out, whether there is any enormous delay in despatching the show cause notice by the Department concerned. In other words the nexus between the date of issuance of show cause notice and the despatch seal by the Post Office may be considered to form an opinion, whether the show cause notice or the order is ante-dated by the authorities.

In other circumstances, the date of issuance of the show cause notice or order is to be taken into consideration for the purpose of reckoning the period of limitation. However, if there any suppression of fact, which is identified, then the date of identification or knowledge about such material facts to the authorities is to be taken into consideration for the purpose of reckoning the period of limitation. The delay of one or two days in affixing the despatch seal in the Post Office cannot be a ground to vitiate the entire inquiry proceedings.

45. The purpose and object of the Rule of Limitation is to ensure that its application has been interpreted pragmatically, so as to meet the ends of justice. In the absence of knowledge about the price value in a document, the authorities may not be in a position to commence an inquiry proceedings to recover the deficit registration fees. No doubt, an order can be nullified on certain technical grounds, but certainly not on hypothetical grounds, which would defeat the interest of justice and result in financial loss to the 'State' revenue. If the show cause notice or an order is ante-dated or issued beyond the period of limitation and the authority had knowledge about the deficit registration fee at the initial stage itself, then the show cause notice or the

order is liable to be set aside. The Government Departments are following certain procedures for despatching show cause notice or orders. The date of seal affixed by the Postal Department cannot be taken into consideration for the purpose of calculating the period of limitation. The date on which the show cause notice or the order has been signed and issued by the competent authority is to be taken into consideration for reckoning the period of limitation.

46. Enormous delay in between the issuance of show cause notice and the date in the seal affixed by the Postal Department, would be a ground to draw a factual inference that the show cause notice has been ante-dated. Thus, mixed question of law and facts, in this regard, is to be considered based on the facts established in a particular case. Blind application of the period of limitation would result in an injustice to either of the parties.

47. It is unambiguous that Section 80-A of the Registration Act stipulates “No enquiry shall be commenced after the expiry of three years of period after the date of registration of the document”.

48. In the above context, the documents in question are to be considered:

(a) Document No.85 of 2011: As per the seal affixed in the document it is registered on 25.02.2011. The date of show cause notice was 06.03.2014 and posted on 10.03.2014.

(b) Document No.95 of 2011: As per the seal of the registering authority the date of registration was 19.03.2011. The date of show cause notice was 06.03.2014, which was posted on 10.03.2014.

49. The learned Additional Advocate General mainly contended that the petitioners have suppressed the material facts regarding the price value of the document and therefore, the respondents have no occasion to verify the price value from the Chennai Metro Rail Limited. Only when the audit party has taken up the issue on 24.10.2011 and completed the audit on 04.11.2011, the authorities came to know about the deficit registration fees to be recovered from the petitioners in respect of two documents registered. After the report of the audit party, the respondents have verified the tender numbers in web portal of the Chennai Metro Rail Limited and traced out that the Tender No.ASA-01 is for the price value of Rs.627.13 Crores and

Tender No.AEP-01 was for the price value of Rs.304.43 Crores.

50. In the present case, the date of registration alone cannot be taken into consideration, so as to nullify the inquiry initiated and completed by the competent authorities in accordance with the provisions of the Act. The date of audit report i.e., 22.11.2011 is to be considered for the purpose of reckoning the period of limitation, since the petitioners have suppressed the material facts regarding the price value of the documents.

51. Suppression of facts in the registered document is vital for the purpose of determining the point of limitation. The limitation should commence from the date of knowledge of the material facts suppressed. Since the petitioners in the present case, had suppressed the price value of the document and hidden the details regarding the tender particulars, the period of limitation is to be taken from the date of audit observations. A person calculatively defeated the provisions of law for unjust personal gains, then the period of identification of such material facts would be taken into consideration for the purpose of reckoning the period of limitation. Mechanical application of period of limitation, in all such cases, if

encouraged, would defeat the principles of justice.

52. A pragmatic interpretation of the Rule of Limitation in such circumstances is imminent. It is not as if a person can be allowed to suppress the material fact in a document, which is registered and during the audit verification, it was found that the price value has been suppressed, an inquiry is contemplated and thereafter, such persons cannot take a defence that the actions are barred by the period of limitation from the date of registration. In such circumstances, the knowledge of the Department is to be taken into consideration.

53. The documents presented for registration in accordance with law, wherein, all the material facts are disclosed and in those cases, the period of limitation is to be reckoned from the date of registration. Suppression of material facts, hiding vital informations, cleverly drafting the recitals in the document and registering the same would not be a ground to defeat the limitation from the date of registration. In all such cases, the limitation is to be reckoned from the date of knowledge or identification of such suppression of material facts or otherwise. Persons who have defeated the

law by suppressing the facts cannot claim the period of limitation of three years from the date of registration of the document.

54. In common parlance, the Law of Limitation will operate from the date of knowledge of an information. If the facts in a document are unambiguous, then the period of limitation is to be reckoned from the date of registration of the document and the Rule of Limitation is to be applied *stricto sensu.* Wherever the suppression of facts are identified by the audit party or the Departments and the price value has not been indicated in the registered document and was hidden by the presentee of the document, then the period of limitation is to be reckoned from the date of knowledge of the Audit Authorities or the Departmental Authorities as the case may be.

55. In the present case, the Document No.99 of 2011 was registered on 17.03.2011 and from the date of registration three years expired on 16.03.2014. The show cause notice was issued on 06.03.2014 and Post Office seal was affixed on 10.03.204. Thus, the inquiry commenced well within the period of three years as contemplated under the Act.

56. Regarding Document No.85 of 2011, it was registered on 25.02.2011. In both the registered documents, the price value was suppressed and hidden by the petitioners. The Audit parties identified the suppression of material facts regarding the price value of the registered documents during the period from 24.10.2011 to 04.11.2011. Thus, the date of identification of the suppressed facts and hidden price value is to be taken into consideration for the purpose of reckoning the period of limitation. Accordingly, the period of limitation in the present case is to be reckoned from 24.10.2011 and the show cause notice was issued on 06.03.2014 and thus, there was no delay in commencing the inquiry proceedings.

57. In the present case, the petitioners have not disputed the issuance of show cause notice on 06.03.2014. Thus, the said date of signing the show cause notice by the authority is to be taken into consideration for the purpose of reckoning the period of limitation. Section 80-A of the Registration Act stipulates that no such inquiry shall be commenced after the expiry of such period after the date of registration of the document. Thus, the Section is unambiguous about the date of registration on one hand and in case of suppression of material facts, the date of identification of such

suppression of facts are to be taken into consideration for the purpose of reckoning the period of three years for initiation of inquiry proceedings.

58. The writ petitioners have completely disowned the document registered by them in Document No.85 of 2011. The material facts were identified only by Audit party during the course of audit from 24.10.2011 to 04.11.2011. Therefore, the period in which the Department had no knowledge about the price value of the document and such price value had been hidden and suppressed by the petitioners cannot be taken into consideration, and the period of limitation is to be reckoned from the date of knowledge of the Registration Department, through audit party.

59. In the explanation submitted by the petitioners, they have stated that they are alien to Document No.85 of 2011. The authorities have no knowledge about the price value or the suppression of material facts by the petitioners regarding the price value, which was hidden by simply stating the tender number in the Consortium Agreement. The Department came to know about the suppression of fact and hiding of price value by the petitioners only during course Audit observation and thus, the period of

limitation, in the present case cannot be reckoned from the date of registration, but to be reckoned from the date of knowledge of the Department. Regarding the recitals of the Consortium Agreement, the nature of transactions, intention of the parties and the recitals in the documents together are to be taken into consideration for the purpose of determining the fact, whether the price value has been directly or indirectly identifiable in the registered documents.

60. Admittedly, a contract by the petitioner with the CMRL was not registered. Consequently, the Consortium Agreements were registered between the parties. The Consortium Agreements were registered for coordination of the companies and to execute the tender contract with the CMRL for the price value. The tender number has been clearly stipulated in the Consortium Agreements registered. But the details regarding the tender were hidden. The project has been defined as Chennai Metro Rail Limited Package No.10 for performing certain works. The word “work” is defined. Accordingly, “work” means the supply and service including design to be provided by the parties to the customer pursuant to the contract. The word “Contract” as per the Consortium Agreement means the contract for the

project to be entered into by the customer and all the parties are awarded by the customer. Though the Consortium Agreement states that the parties agree that neither profit nor loss shall accrue to the Consortium Agreement, Article 2 of the Consortium Agreement indicates that “Each party agrees that it bids for its agreed part of the contract and retains the results of its own scope with clear commitment to complete its agreed part”.

61. To execute the contract in the unregistered documents with the CMRL, the petitioners had registered the Consortium Agreements. Thus, the petitioners designed the Consortium Agreement in such a manner by suppressing the material facts and hiding the price value with an intention to evade the registration fees. What the petitioners cannot do directly, cannot do indirectly to evade registration fees. However, the recitals in the Consortium Agreements were gone into by the Audit Parties during the course of audit observations and ascertained the price value of the Consortium Agreements and thereafter issued the Show cause notice to the petitioners asking them to pay the deficit registration charges.

62. In the present case, by dividing the tender contract, firstly with the

CMRL through unregistered document and thereafter, through registered Consortium Agreements, the petitioners have successfully evaded registration fees at the time of registering the Consortium Agreements. The petitioners have intentionally suppressed the material facts and concealed the price value at the time of registration. The price value involved in the tender has not been stated expressly. The Consortium Agreements have been drafted in a clever manner with an idea to escape from the clutches of registration fees. The companies attempting to evade such statutory charges indirectly by adopting certain magical language at no circumstances can be encouraged. The various clauses in the Consortium Agreements, if deeply gone into would indicate that performance of the contract is impossible without price value as it involves price considerations.

63. Mechanical or blind application of Rule of Limitation is impermissible and it is a mixed question of law and facts. State revenue is to be protected at all circumstances. Persons attempting to evade statutory charges by hiding or suppression at no circumstances be allowed. In such circumstances, the Law of Limitation is to be interpreted, so as to ensure that the date of knowledge of the Department regarding the irregularity,

illegality, suppression of facts, hiding of material facts are to be taken into consideration for the purpose of reckoning the period of limitation. Arithmetic calculation of Law of Limitation would result in an in justice to the State revenue and Courts are expected not to apply the Law of Limitation in such a manner so as to defeat the principles of justice.

64. Thus, this Court has arrived at an inevitable conclusion that the grounds raised by the petitioners are neither candid nor convincing, but to be rejected.

65. Accordingly, this Writ Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. However, there shall be no orders as to cost.

.08.2023

Jeni/Sha
Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

To

1.The Joint I Sub-Registrar,
DRO, Chennai Central,
Bharathi Salai,
Chennai – 600 014.

2.The District Registrar (Admn.) (Addl. In-charge),
Central Chennai,
Chennai – 600 014.

3.The Inspector General of Registration,
No.100, Santhome High Road,
Mullima Nagar, Mandavalipakkam,
Raja Annamalai Puram,
Chennai – 600 028.

S.M.SUBRAMANIAM, J.

Jeni/Sha

W.P.No.5521 of 2015

.08.2023