

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CWP-15240-2019

Reserved on: 13.01.2023

Date of Decision: ~~10~~.02.2023

M/S ASF INSIGNIA SEZ PVT. LTD.

.... Petitioner

Versus

STATE OF HARYANA AND OTHERS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Jasdev Singh Mehndiratta, Advocate,
for the petitioner.

Mr. Anant Kataria, DAG, Haryana.

Mr. Shubham Attri, Advocate, for respondent No.7.

JAISHREE THAKUR.J

1. The present writ petition has been filed under Article 226/227 of the Constitution of India seeking a writ in the nature of mandamus to be issued for refund of the stamp duty paid on the lease deed.

2. In brief the facts as can be discerned are that the land in question belongs to the petitioner M/s ASF Insignia SEZ Private Limited and is situated in the Special Economic Zone and is therefore exempted from stamp duty. Tata Consultancy Services ("TCS" for short), respondent No.7 herein, took the land from the petitioner-M/s ASF Insignia SEZ Private Limited, under lease. Although the land is exempted from stamp duty, the respondent State emphasized that the procedure for getting the lease deed registered, is to pay the stamp duty in the first instance and then get the said

amount refunded. TCS, the lessee, paid the stamp duty amounting to Rs.2,08,02,845/- to get the lease deed registered. As per Clause 6 in the lease deed, it was specified that in case the stamp duty is not refunded by the State to the lessee for whatsoever reason, despite the land being exempt from payment of stamp duty, then the applicable stamp duty shall be refunded by the lessor i.e. the petitioner to the respondent-TCS against the lease rent payable. Said clause of the lease deed further specified that the lessor shall fully indemnify and keep harmless the lessee in this regard. Since the stamp duty was not being refunded to the lessor by the State, the present writ petition has been filed seeking refund since the petitioner has to indemnify the respondent in case of any loss. Hence, the present writ petition.

3. Mr. Jasdev Singh Mehinderatta, learned counsel appearing on behalf of the petitioner would submit that the levy of stamp duty on the registration of the lease deed is contrary to the provisions of Section 3 of Indian Stamp Act, wherein proviso in sub-section (3) specifies that no stamp duty shall be charged in connection to the land in the Special Economic Zone. The petitioner also relies upon Article 265 of the Constitution of India which specifies that *no tax shall be levied or collected except by authority of law*. It is also argued that respondent No.7 had addressed several communications for refund of the stamp duty paid and the Director Industries and Commerce in its communication dated 29.11.2013 asked the said respondent to take up the issue with the SEZ Developers, who in turn should take up the matter with the State Government. There is communication available on the record from the authorities concerned which would reflect that stamp duty should not have been charged.

4. *Per contra*, Mr. Anant Kataria, DAG, Haryana, learned counsel appearing on behalf of the respondent-State would submit that the petitioner has no locus to maintain the present petition because the stamp duty has been paid by respondent No.1- M/s TCS Ltd. and not the petitioner. Moreover, there is no provision for refund of stamp duty under the provisions of the Indian Stamp Act. It is argued that Section 49 and 54 of the said Act provides for various situations for refund of stamp duty and the case of the petitioner is not covered thereunder.

5. I have heard the counsel for the parties and with their assistance have gone through the pleadings of the case and the law applicable.

6. Admittedly, the petitioner herein leased land that is part of the Special Economic Zone to respondent No.7 and the lessee had to deposit stamp duty to get the same registered. In terms of clause 6 of the Lease Agreement, it was the duty of the petitioner to facilitate the application made for refund of the stamp duty. Clause 6 of the Lease Agreement as under:-

“..... it shall be the responsibility of the lessor to facilitate the application made by the lessee for such stamp duty refund; and in case such stamp duty refund cannot be availed due to any reason whatsoever, in spite of such exemption (by way of refund) being available under the applicable SK said scheme and the lessee having complied the formalities in this regard, then the applicable stamp duty shall be reimbursed by the lessor to the lessee or adjusted against the lease rent payable hereunder. The lessor shall fully indemnify and keep harmless the lessee in this regard.”

Since the stamp duty has not been refunded and the petitioner is either to reimburse the stamp duty paid by the lessee to it or make adjustments against the lease rent, it can safely be held that the petitioner has the locus to approach the High Court under Article 226 of the Constitution of India seeking a direction to be issued for refund.

7. As per Section 3 of Chapter II of the Indian Stamp Act, 1899, certain instruments are chargeable with duty, with a proviso to sub-clause 3 that any instrument executed, by, or, on behalf of, or, in favour of, the Developer, or Unit or in connection with the carrying out of purposes of the Special Economic Zone, the said instrument shall be exempt from payment of stamp duty. The said Section is reproduced as under:-

*“3. **Instrument chargeable with duty.**-Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore, respectively, that is to say-*

xxx xxx xxx xxx

Provided that no duty shall be chargeable in respect of-

xxx xxx xxx xxx

(3) any instrument executed, by, or, on behalf of, or, in favour of, the Developer, or Unit or in connection with the carrying out of purposes of the Special Economic Zone.”

8. A series of documents annexed with the writ petition would further support the case of petitioner for refund of the stamp duty as claimed. Communication dated 21.12.2013, Annexure P-14, from Additional Chief Secretary, Industries and Commerce Department to the Additional Chief Secretary-cum-Financial Commissioner, Revenue and Disaster Management

Department reads as, “.... *you would be shocked to know that Stamp Duty has been charged on the lease deed executed by M/s ASF Insignia in favour of M/s TCS, whereas the same is exempted as per the State SEZ Act and the rules there under...*” Respondent-authorities were accordingly asked that stamp duty should not have been charged and were requested to take further action for refund of Stamp Duty.

9. In the instant case, the lease deed which was subjected to payment of stamp duty had been executed on 01.03.2012 between the petitioner and M/s TCS Ltd. for setting up an Information Technology/Information Technology Enabled Services (“IT/ITES”) Sector Specific Special Economic Zone (“SEZ”) pursuant to approvals granted by Government of India vide notification No.1556, dated 17.12.2007 and Government of Haryana vide notification No.49/6/2009-4IB-1, dated 22.01.2009, under the relevant provisions of SEZ Act and other Acts. Once the lease deed on which stamp duty has been charged is part of the SEZ, as would be evident from the lease deed itself, the same would be exempted from payment of stamp duty. Despite the provisions of the Indian Stamp Act, 1899 which provide that no duty shall be charged in respect of any instrument executed for the purpose of carrying out the purposes of the Special Economic Zones and in terms of Section 11 (2) of the Haryana SEZ Act, 2005, which exempts all transactions and transfers of immovable property or documents related thereto, within the Economic Zone from the stamp duty, the same was illegally charged and now being retained. There is no provision of charging stamp duty on a lease deed on areas which falls within the Special Economic Zone. The action of the respondents in initially

demanding the stamp duty for registration of the lease deed and illegally retaining the same despite several requests having been made to it and a recommendation by the Government itself to do so, is not sustainable.

10. Learned counsel appearing on behalf of the respondent State has vehemently argued that there is no provision for refund of the stamp duty as envisaged in the particular case. He has argued that Section 49 of the Indian Stamp Act permits refund of the stamp duty on various grounds as enumerated thereunder. Section 50 of said Act allows for refund under Section 49 if the application for refund is made within the time specified under Section 50 of the Act. Sections 49 and 50 of the Indian Stamp Act are reproduced hereunder:-

“49. Allowance for spoiled stamps. — Subject to such rules as may be made by the State Government as to the evidence to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in Section 50, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely: —

(a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person;

(b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto;

(c) in the case of bills of exchange payable otherwise than on demand or promissory notes—

(1) the stamp on [any such bill of exchange] signed by or

on behalf of the drawer which has not been accepted or made use of in any manner whatever or delivered out of his hands for any purpose other than by way of tender for acceptance:

Provided that the paper on which any such stamp is impressed, does not bear any signature intended as or for the acceptance of any bill of exchange to be afterwards written thereon;

(2) the stamp on any promissory note signed by or on behalf of the maker which has not been made use of in any manner whatever or delivered out of his hands;

(3) the stamp used or intended to be used for any such bill of exchange or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange may have been presented for acceptance or accepted or endorsed, or, being a promissory note, may have been delivered to the payee: provided that another completed and duly stamped bill of exchange or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, or note;

(d) the stamp used for an instrument executed by any party thereto which—

(1) has been afterwards found to be absolutely void in law from the beginning;

(2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended;

(3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed;

(4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended;

(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose;

(6) becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument between the same parties and bearing a stamp of not less value;

(7) is deficient in value and the transaction intended to be thereby effected has been effected by some other instrument between the same parties and bearing a stamp of not less value;

(8) is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped:

Provided that, in the case of an executed instrument, no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled.

Explanation.—*The certificate of the Collector under Section 32 that the full duty with which an instrument is chargeable, has*

been paid is an impressed stamp within the meaning of this Section.”

50. Application for relief under section 49 when to be made.—

The application for relief under section 49 shall be made within the following periods, that is to say, —

(1) in the cases mentioned in clause (d) (5), within two months of the date of the instrument;

(2) in the case of a stamped paper on which no instrument has been executed by any of the parties thereto, within six months after the stamp has been spoiled;

(3) in the case of a stamped paper in which an instrument has been executed by any of the parties thereto, within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed:

Provided that, —

(a) when the spoiled instrument has been for sufficient reasons, sent out of India, the application may be made within six months after it has been received back in India;

(b) when, from unavoidable circumstances, any instrument for which another instrument has been substituted, cannot be given up to be cancelled within the aforesaid period, the application may be made within six months after the date of execution of the substituted instrument.”

However, this argument would not be available to the respondent State on the ground that there is no provision under the Indian Stamp Act itself to charge stamp duty on the instrument sought to be registered which was of area within the SEZ. The very act of asking for stamp duty as a condition precedent to the registration of the sale deed is beyond the provisions of the

Indian Stamp Act and the Haryana SEZ Act and, therefore, the argument as raised is unsustainable. Even otherwise, the law in this regard is well settled that *no tax shall be levied or collected except by authority of law* per Article 265 of the Constitution of India. Article 265 of the Constitution of India has been deliberated upon by the Constitutional Bench of the Supreme Court in ***Mafatlal Industries Limited Versus Union of India, 1997(5) SCC 536*** wherein it has been held that any tax collected contrary to law has to be refunded. Para 25 of said judgment reads as under:-

“25. Article 265 of the Constitution is declaratory in nature. It says that "no tax shall be levied or collected except by authority of law". This no doubt means that taxes collected contrary to law have to be refunded. But where a taxing enactment contains provisions providing for and governing the refund of taxes collected without the authority of law, the validity of such provisions, if and when questioned, has to be examined with reference to other provisions of the Constitution. Article 265 does not itself lay down any criteria for testing the validity of a statute. When it speaks of "law", it no doubt refers to a valid law but the validity of a law has to be determined with reference to other provisions in the Constitution.”

Further reference can also be made to judgment as rendered by various High Courts in ***Dalmiya Cement Venture Limited Versus State of Karnataka, 2017 SCC OnLine Kar 4480*** which took note of the decision rendered by the Supreme Court in ***Mafatlal Industries Limited's case (supra)***. The High Court at Delhi in ***Piyush Agarwal Versus NCT, 2005 SCC OnLine Del 242*** has held that stamp duty collected without authority of law cannot be

retained in terms of Article 265 of the Constitution of India. Para 11 of said judgment reads as under:-

“11. ...Further as noticed earlier dehors the applicability of Section 52 of the Act, stamp duty collected without authority of law cannot be retained in terms of Article 265 of the Constitution of India in the absence of any statutory provision refund application to be submitted within a specified period or prohibiting the refund unless made within the specified period. In the instant case, it may be noted, that application for refund had been made within the stipulated period of six months under Section 52 of the Act.”

11. In the present case without any authority of law, stamp duty has been collected from respondent No.7 while registering the lease deed of plot situated in SEZ whereas charging of stamp duty in such a case is specifically exempted under Section 3(3) of the Indian Stamp Act and Section 11 of the SEZ Act and once the said instrument is exempted, charging of stamp duty for purposes of registration is without any authority of law and, therefore, would be violative of Article 265 of the Constitution of India.

12. Consequently finding that the action of the respondents No.1 to 6 in charging of stamp duty and thereafter illegally retaining the same despite a recommendation for the same to be refunded by the Additional Chief Secretary, Industries and Commerce Department, Haryana is contrary to the provisions of law and, therefore, the petitioner herein, who has to indemnify respondent No.7 lessee in case the stamp duty is not refunded to the said respondent, would be entitled to refund of the same along with interest @ 7%

per annum from the date, the same was deposited till the said amount is refunded.

13. Writ petition stands allowed in the above terms.

(JAISHREE THAKUR)
JUDGE

10.02.2023

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No