

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 7384 of 2018 (O&M)
Reserved on: March 14, 2023
Pronounced on: March 23, 2023

M/s Virat Special Steels Pvt. Ltd.

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Abhivadya Sood, Advocate
for the petitioner.

Mr. Anant Kataria, DAG, Haryana.

JAISHREE THAKUR, J.

1. The petitioner herein seeks issuance of a writ in the nature of Mandamus directing the respondents authorities to refund ₹75,60,200/- along with interest on account of excess stamp fee received.

2. The facts, as alleged, are, that the petitioner company intended to purchase plot No. 545C in District Gurugram from Haryana Urban Development Authority (HUDA). Stamp paper was to be purchased online through the e-portal of Haryana Government i.e respondent No. 1, on 23.11.2017 for a sum of ₹ 7,56,020/-. There was no provision for typing in the words reflecting the amount and on account of an erroneous and malfunction of the software, the legitimate amount of ₹7,56,020/- could not be entered resulting in a sum of ₹75,60,200/- debited from the account of the petitioner. The petitioner thereafter approached the competent

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authorities for refund of the amount of ₹75,60,200/- as the same had been debited from its account because of the faulty software. The petitioner company being the bona fide purchaser again paid the due stamp duty of ₹ 7,68,500/- through online transaction and got the sale deed registered. Since the amount was not being refunded, the petitioner has presented the instant writ petition.

3. Learned counsel appearing on behalf of petitioner contends that it is only on account of an erroneous software that an amount of ₹75, 60,200/- was debited from the account of the petitioner, while trying to do an online transaction to purchase stamp fee for registration of the plot. It is contended that there is no method for recovery of the same once the amount is debited wrongly. In fact, the stamp fee that was payable was ₹ 7,56,020/-which was paid afresh on 20.12.2017. Learned counsel for petitioner would contend that during the pendency of these proceedings, the amount of ₹75, 60,200/- minus 10% has been refunded, which the petitioner would be entitled to as the same has been illegally retained.

4. Per contra, the learned counsel for the respondents would submit that the amount of the amount of ₹75,60,200 minus 10% has been refunded as per the provision of the Section 49 and read Section 50(2), 54 of the Indian Stamp Act 1899 (“**the Act of 1899**” for short) and, therefore, the writ petition has been rendered infructuous.

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

6. As per the initial claim in the writ petition, the petitioner

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had urged for refund of ₹ 75,60,200/-. It was submitted that stamp fee of ₹7,56,020/- was to be purchased online through the Haryana Government portal for the registration of a plot, but on account of the software malfunction, an amount of ₹75, 60,200/- was debited from the bank account of the petitioner. It is submitted that there is no method of rectification once the amount stands illegally debited. It is argued that the petitioner immediately made a representation for refund of the said amount, but the respondents failed to refund the same. Whereas, the learned counsel for the respondents has argued that there is no proof that there was a software malfunction or technical glitch other than the bald statement of the petitioner. Furthermore, the amount stands refunded under the provisions of the Act of 1899.

7. The argument that an amount of ₹ 75,60,200/- was deducted on account of a software malfunction has been countered by the counsel for the respondents and there is nothing on the record to establish the contention as raised by the counsel for the petitioner. It could be that while submitting the figures online for stamp fee, the additional '0' was typed instead of typing in ₹7,56,020/- and that is why an amount of ₹ 75,60,000/- was deducted. It is a matter of evidence as to whether there was a software malfunction as claimed by the counsel for the petitioner and, therefore, in writ jurisdiction this issue cannot be gone into.

8. Learned counsel for the petitioner has relied upon a judgment rendered in **Mafatlal Industries Ltd. Ahmedabad etc. etc. vs. Union of India etc. etc. (1997) 5 SCC 536** to argue that Article 265 of the

Constitution of India is violated, if State unlawfully retains the amount of 10% after refunding the principal. Moreover, the State cannot be allowed to unjust enrichment in case it is allowed to retain 10% of the value of the stamp fee which was credited erroneously, considering that the correct amount had been deposited and the plot subsequently registered. **Learned** counsel has also relied upon a judgment rendered in **Dalmiya Cement Venture Ltd. Vs. State of Karnataka 2018 (1) AIR Kar 99** to argue that the state cannot retain excess amount of stamp duty. However both cases cited are distinguishable and not applicable to the facts and circumstances of the present case.

9. In **Mafatlal Industries Ltd.'s case (Supra)**, the question before the Supreme Court was pertaining to the refund of excise and customs duties which had been collected contrary to law. The Constitutional Bench was seized of the issue of refund of excise and customs duties when a provision of the Act under which tax is levied is struck down as unconstitutional for transgressing the constitutional limitations, and in a second situation where the tax is collected by the authorities under the Act by mis-construction or wrong interpretation of the provisions of the Act, Rules and Notifications or by an erroneous determination of the relevant facts, i.e., an erroneous finding of fact. It was under these circumstances when the Supreme Court came to hold that the State cannot be allowed unjust enrichment on account of having collected tax illegally. It was held as under:-

"Any provision appearing or trying to bar recovery of illegally

collected tax is violative of Article 265 of the Constitution and must be struck down. Once it is established that more than what is payable under the statute has been collected from the taxpayer, the taxpayer automatically gets a right to get back the whole amount. If the right is sought to be effectively taken away by imposing conditions, then the law imposing these conditions must be declared to be bad and ultra vires the Constitution.

There is another aspect of this matter. The Exercise Officer cannot tax more than what is permitted by the statute. If the levy is in excess of the statute, then its retention by the State is unauthorized by law. What is being retained is not in enforcement of the charging section but something else. Such illegally collected tax the money has to be utilized by the State and is not within the disposing power of the State. If the money has to be utilised by the State, the State has to find out some legitimacy for having possession of the money.

Protection under Article 265 afforded to the citizens from State oppression in financial matters. Article 265 must be implemented in letter and spirit as it stands and all the tax laws and all Government actions to realise and retain tax must be tested on the anvil of this guarantee. The Courts should jealously guard against any attempt to whittle down or do away with any of the guarantees given under the Constitution to the citizens. If any law is passed for retention of illegal levy, it must be struck down. If the Court comes to the conclusion that a levy of tax is unlawful, the Court will direct the Government to return the tax. It is not for the Court to enquire how the taxpayer has managed his affairs after payment of the unlawful levy. The Court cannot, by torturing the language of Article 265 or by any other means, construe it so as to give it a meaning which it does not naturally bear."

In the case in hand, the State had not asked the petitioner to deposit the tax/octroi on the basis of any law or the misinterpretation of the same, which was the issue in the case referred to above. Stamp fee being debited through e-portal stands already refunded minus a 10% deduction.

10. In the case of **Dalmiya Cement Venture (Supra)**, the court directed for the refund of excess of stamp duty paid by them by relying on the judgment rendered in Mafatlal Industries (supra) under Section 44 of the Stamp Act. In the case referred to, the petitioner therein purchased stamp paper presuming the value of the land to be “X” however when the land was registered, the value of the land had dropped, thereby making the stamp duty paid to be in excess. It was under these circumstance that while relying on Section 44 (2) of the Karnataka Stamp Act 1957, the refund was ordered.

Section 44(2) of the said Act reads as under:-

“Where, in the opinion of the Chief Controlling Revenue Authority, stamp duty in excess of that which it is legally chargeable has been charged and paid under [any of the provisions of this Act], such authority may, upon application in writing made [within six months from the date of registration of the instrument or the order charging the same], refund the excess :

[Provided that with sanction of the State Government the Chief Controlling Revenue Authority may make the refund after the period specified in sub-section (1) or (2)].”

11. In the present case, the contention raised by the learned counsel for the petitioner, that the petitioner company is entitled to the refund of the entire amount without any deductions, needs to be addressed. The Act of

1899 and the Haryana Government instructions allow refund of amount for spoiled stamps in two situations that is (i) refund against failure transaction; (ii) refund against successful transaction. Section 49 of the Act of 1899 allows for refund of spoiled stamps in certain situations as enumerated in Section 49 (a) to (c) and 49 (1) to (8). The Act of 1899 also makes allowance for stamps not required for use. Section 54 of the Act 1899 is reproduced as under:

“54. Allowance for stamps not required for use.—When any person is possessed of a stamp or stamps which have not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp or stamps in money, deducting 1 [ten naye paise] for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction— (a) that such stamp or stamps were purchased by such person with a bona fide intention to use them; and (b) that he has paid the full price thereof; and (c) that they were so purchased within the period of six months next preceding the date on which they were so delivered: Provided that, where the person is a licensed vendor of stamps, the Collector may, if he thinks fit, make the repayment of the sum actually paid by the vendor without any such deduction as aforesaid.”

The said section provides that a person possessing a stamp paper for which he has no immediate use (which is not spoiled or rendered unfit or useless) can seek refund of the value thereof by surrendering such stamp paper to the Collector provided it was purchased within the period of six months next preceding the date on which it was so surrendered. The Collector on receipt

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of application is to refund the value of the stamp after deducting 10% of such value. In the instant case, the respondent authority has refunded the amount after deducting 10% of the value which action is in consonance with the Act of 1899.

12. The argument that the stamp duty paid is in 'excess' would not be tenable in the light of the facts as narrated above. The petitioner paid for stamp duty of ₹75,60,200/- via e-portal on 23.11.2017, but did not get the deed registered on the same day. It has not been established that there was a computer or software malfunction or an inadvertent mistake by the petitioner, while filing in the details. Subsequently, a month later, fresh deposit was made on 20.12.2017 and ₹7,68,500/- was debited from the account of the petitioner and the deed was registered. If the transaction had been concluded on 23.11.2017 itself, or thereabout on the stamp duty paid of ₹75, 60,200/-, it could have been said that 'excess' stamp duty had been paid. But a fresh transaction was initiated on 20.12.2017 and at best the petitioner can ask for refund of unutilized stamp duty under provisions of the Act of 1899. Section 54 thereof allows for refund of stamp not utilized with a 10% deduction and the same stands complied with.

13. Consequently the writ petition stands dismissed.

March 23, 2023

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(JAISHREE THAKUR)

JUDGE

Whether speaking/reasoned :

Yes

Whether Reportable :

No