29th January, 2024
(AK)
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W.P.A 1309 of 2021

Diamond Beverages Private Limited and another
Vs.
The State of West Bengal and others

Mr. Jayjit Ganguly
Mr. Pradip Sancheti
Mr. Biswajit Chowdhury
Mr. Biswaroop Mukherjee
...for the petitioners.

1. The petitioners face a peculiar predicament. The petitioners took a lease of thirty years from the Kolkata Port Trust.

2. The said lease was contemplated on annual rent basis. The petitioners had agreed to pay the entire rent for the total tenure of the lease upfront as per the tender conditions.

3. However, when the petitioners approached the Registration Authorities for the purpose of assessing the stamp duty, the Registering Authorities imposed the stamp duty by taking as its basis the entire upfront amount, not on the basis of annual rent but the entire period of thirty years, and added GST as well as Municipal taxes to it for the purpose of calculation.

4. Being aggrieved, the petitioners approached this court.

5. By an order dated November 12, 2018 a coordinate Bench of this court disposed of the said writ petition bearing W.P. No. 20094(W) of 2018, granted liberty to the petitioners to pay the said stamp duty and the total registration fee but at the same time, directing the respondent authorities to consider the representation of the petitioners pertaining to the dispute as to assessment.
6. Upon such a representation being considered, however, the Registering Authorities maintain their previous stand, except with regard to the GST component of the same.
7. It is argued by learned counsel for the petitioners that even the GST component has not been refunded to the petitioners as yet despite the authorities having held in favour of the petitioners on such count.
8. As regards the other components of the assessment, the petitioners, being aggrieved, preferred an appeal under Section 47B of the Indian Stamp Act (as amended in West Bengal); however, the respondents are apparently taking a stand that the appeal is not maintainable.
9. It is argued that in view of the tenor of the order of the coordinate Bench, the question of the dispute was kept open to be assessed and as such an

appeal is very much maintainable under Section 47B.

10. Although the petitioners have grievance on a more basic premise as regards the implementation of the present CORD system which according to the petitioners is in contravention of the provisions and scheme of the Stamp Act, instead of pressing the said relief in the present writ petition, the petitioners seeks an early disposal of their appeal and a logical culmination of the same, as well as a refund of the GST component which was held to be refundable to the petitioners.

11. Despite service, none appears for the respondents.

12. Affidavit-of-service filed in court today be kept on record.

13. The petitioners have a point in arguing that the petitioners' grievance was kept open for being decided by the Registration Authorities by the coordinate Bench judgment and as such, the petitioners, in all probability, have a right to prefer an appeal under Section 47B.

14. However, it would be premature to decide on the maintainability of the appeal, since the same is also a subject-matter of challenge in connection with the pending adjudication of the petitioner's appeal under Section 47B of the Indian Stamp Act (as amended in West Bengal).

15. The purpose of justice would be subserved if the respondents are directed to refund the admitted GST component to the petitioners and the appeal of the petitioners is decided expeditiously.

16. Accordingly, WPA 1309 of 2021 is disposed of by directing the respondent no.6 to ensure that the GST component of the deposits made by the petitioners, which has been admittedly held to be refundable to the petitioners, be refunded to the petitioners at the earliest, positively within four weeks from the date of communication of this order to the said respondent.

17. Insofar as the pending appeal of the petitioners is concerned, the respondent no.3, that is, the Commissioner, Presidency Division, Government of West Bengal shall dispose of the pending appeal of the petitioners under Section 47B of the Indian Stamp Act as expeditiously as possible, preferably within six weeks from the date of communication of this order to the said respondent.

18. It is made clear, however, that the question of maintainability of the said appeal is also left open along with the other issues involved, for being canvassed and decided at the final hearing of the said appeal.

19. The parties shall act on a server copy of this order without insisting upon prior production of a

certified copy for the purpose of compliance of the same.

20. Since there is no occasion at this juncture to enter into the proposed challenge to the CORD Rules and the legality and constitutionality of the same, it is left open for the petitioners to prefer a challenge against the said Rules and the validity of the same, if the petitioner so choses, in a properly constituted challenge at the appropriate stage.

21. There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)