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W.A.No.643 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY
W.A.No.643 of 2023

Leela Lace Holdings Private Limited
(Formerly known as M/s.Leela Lace Software Solutions
Private Limited, M/s.Leela Scottish Lace Private Limited
and M/s.Design Creations (Mumbai) Private Limited)
Leela Baug, Andheri-Kurla Road
Andheri (East), Mumbai – 400 059
Rep. by its Director
Vinod Wadhmal Agnani .. Appellant

Vs.

1. The Chief Controlling Revenue Authority
& Inspector General of Registration
Tamil Nadu, Mylapore
Chennai – 600 028.
2. The District Registrar (Administration)
Pattukottai.
3. Pattukottai Sub-Registrar Joint II
Pattukottai Tamil Nadu.
4. M/s.Leela Lace Holdings Pvt. Ltd.
(formerly known as Leela Scottish Lace Pvt. Ltd.)
Leela Baug, Andheri-Kurla Road
Andheri (East), Mumbai – 400 049.



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[Accepted the cause-title vide order dated
01.03.2023 in C.M.P.No.1748 of 2023
in W.A.SR.No.5253 of 2023]

.. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 29.11.2022 in W.P.No.5864 of 2015 and allow W.P.No.5864 of 2015.

For the Appellant : Mr.A.R.Karunakaran

For the Respondents : Mr.A.Edwin Prabakar
State Government Pleader
assisted by Mr.K.Karthik Jagannath
Government Advocate
for R1 to R3

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

Heard Mr.A.R.Karunakaran, learned counsel appearing for the appellant and Mr.A.Edwin Prabakar, learned State Government Pleader, assisted by Mr.K.Karthik Jagannath, learned Government Advocate appearing for respondents 1 to 3.

2. The present appeal is directed against the judgment and order passed by the learned Single Judge in W.P.No.5864 of 2015 dated 29.11.2022.



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3.1. It is the case of the appellant that the appellant and the fourth respondent are constituents of a group of companies held by the same management and they have factories and office at Madras, Karnataka and other States. The fourth respondent was the absolute owner of the properties at Ambattur Industrial Estate, SIDCO Industrial Complex, Guindy, Amalapattu, Tanjore District etc. All the properties are located within the State of Tamil Nadu. The appellant was a subsidiary company of the fourth respondent in the year 2004-05. The fourth respondent held 96.3% of the appellant's total shareholdings.

3.2. It is contended that due to restructuring the business of the group of companies, a petition was filed for sanction of a Composite Scheme of Arrangement of several of the group of companies. By the order dated 09.09.2005, the respondent authorities sanctioned the scheme. Under the said scheme, the garment business of the fourth respondent stood transferred to the appellant.



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3.3. The fourth respondent executed an Indenture of Transfer on 19.04.2005 in favour of the appellant, whereby, several properties belonging to the fourth respondent in the State of Tamil Nadu were transferred to the appellant for a consideration of Rs.25 Crores. The transfer was executed at Pattukottai. On or about 19.04.2005, the registered office of the fourth respondent was at Plot No.22 (SP), Thiru-Vi-Ka Industrial Estate, Guindy, Madras – 600 032. On the said date, the registered office of the appellant was at Super A8 & 9, Guindy Industrial Estate, Madras.

3.4. The appellant claimed remission of stamp duty, as contemplated under G.O.Ms.No.1224, dated 25.04.1964 and the subsequent amendment dated 25.01.1995. The third respondent did not register the indenture of transfer dated 19.04.2005, instead, issued a letter dated 24.02.2006, calling upon the appellant to pay a sum of Rs.1,99,99,900/- (Rupees One Crore Ninety Nine Lakhs Ninety Nine Thousand and Nine Hundred Only) as deficit stamp duty. The appellant replied to the same, however, the authorities did not accept the explanation of the appellant.



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3.5. The appeal filed by the appellant before the first respondent was dismissed. Aggrieved thereby, the appellant filed a writ petition bearing W.P.No.5864 of 2015. The appellant also filed two other writ petitions bearing W.P.Nos.20043 and 30830 of 2015. The learned Single Judge dismissed the writ petition filed by the appellant bearing W.P.No.5864 of 2015, allowed W.P.No.30830 of 2015 and disposed of W.P.No.20043 of 2015 as infructuous.

3.6. In view of that, the present appeal is limited to the extent of the judgment and order, so far as it is dismissing the appellant's claim in W.P.No.5864 of 2015.

4. The learned Single Judge observed that the Government Order bearing G.O.Ms.No.1224, dated 25.04.1964, relied by the appellant, and as amended in the year 1995, was intended to extend the benefit to the companies, where the property is situated within the State of Tamil Nadu and the registered office of the company in the State of Tamil Nadu. The object of granting



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exemption is to promote the companies who are operating inside the State of Tamil Nadu to avail the benefits. The appellant, merely taking advantage of the provisio of the Government Order that the registered office of the company is to be situated in Madras, shifted the registered office of the company of the appellant to Madras only for the purpose of availing the benefit. The appellant earlier was having registered office in Maharastra. It changed the registered office to Madras on 01.03.2005 and again, after the documents were submitted for registration, shifted the registered office back to Maharastra on 03.06.2005. The Government Order granting exemption in fiscal matters has to be strictly complied. It is only with a view of avoiding huge stamp duty, the registered office was shifted to Tamil Nadu and re-shifted back to Maharastra within 45 days. It is fraud on the stamp and registration and such things cannot be encouraged.

5.1. Learned counsel for the appellant submits that the taxing statutes have to be strictly construed. There is no question of intention. The appellant satisfied the conditions enumerated in



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G.O.Ms.No.1224 dated 25.04.1964 and the subsequent amendment dated 13.07.1995.

5.2. The learned counsel for the appellant relied upon the judgment of the Apex Court in the case of **Vodafone International Holdings BV vs. Union of India and Anr.**¹ and another judgment in the case of **A.V.Fernandez vs. The State of Kerala**².

6. The learned State Government Pleader supported the judgment passed by the learned Single Judge and submits that it is with a view to evade the stamp duty and the registration charges, the appellant shifted its registration office from Maharashtra to Tamil Nadu and after the purpose was over, within a period of 45 days, shifted back the registered office to Maharashtra. The act of the appellant was playing fraud on the Indian Stamp Act, 1899. The letter and spirit of the statute are to be considered. The learned Single judge has properly considered the said aspects.

1 (2012) 6 SCC 613

2 AIR 1957 SC 657



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7. The factual matrix does not seem to be disputed. On 01.03.2005, the registered office of the appellant was shifted from Maharashtra to Tamil Nadu and the certificate of registration of the appellant's possession of the registered office in the State of Tamil Nadu is issued on 01.03.2005. On 03.06.2005, the registered office of the appellant is transferred from Tamil Nadu to Maharashtra.

8. It would be clear that for three months, the appellant's registered office was in the State of Tamil Nadu though it is carrying out business since long period. The only question is just because prior to the registration of the Indenture of Transfer, the registered office was shifted to Tamil Nadu and after ensuring registration, the appellant, again within 45 days shifted back to Maharashtra would preclude the appellant from getting the benefit of the policy of the State of Tamil Nadu as contained in G.O.Ms.No.1224, dated 25.04.1964 and the subsequent amendment.



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9. For ready reference, the relevant portion of the Government Order and the subsequent amendment are reproduced hereunder:

"G.O.Ms.No.1224, Revenue, dated 25th April, 1964

Stamp duty – Recommendations of Taxation Enquiry Commission – List of reluctance and remission – Revised.

Read:-

...

Annexure

Notification

In exercise of the powers conferred by clause (a) of Sub-Section (1) of Section 9 of the Indian Stamp Act, 1899 (Central Act 11 of 1899) and in supersession of the Revenue Department Notification No.13, dated the 17th December, 1938 published at pages 20-22 of Part 1 of the Fort St. George Gazette, dated the 10th January 1939 as subsequently amended, the Governor of Madras hereby reduces to the extent set forth in each case the duties chargeable in the State of Madras under the said Act in respect of the instruments set forth in each case the duties chargeable in the State of Madras under the said Act in respect of the instruments hereinafter described under Nos.28, 32, 34, 44, 45 and 47 and remits the duties so chargeable in respect of the instruments of the other classes hereinafter described.

(1) to (37) ...



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(38) Instrument evidencing transfer of property between companies limited by the shares in the Companies Act, 1956, in a case where (i) at least 90 per cent of the issued share capital of the transferee company is in the beneficial ownership of the transferor company, or (ii) where the transfer takes place between a parent company and a subsidiary company one of which is the beneficial owner of not less than 90 per cent of the issued share capita of the other, or (iii) where the transfer takes place between two subsidiary companies of each of which not less than 90 per cent of the share capital is in the beneficial ownership of a common parent company;

Provided that the certified copy of the relevant records of the companies, kept in the office of the Registrar of the Companies, Madras, is produced by the parties to the instrument to prove that the conditions above prescribed are fulfilled.

(39) to (68) ...”

and



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"Commercial Taxes and Religious Endowment
Department

G.O.Ms.No.37

Dt.25.01.1995

1. G.O.Ms.No.1224, Revenue Department Dt. 25.04.1964 and also
2. From the Inspector General of Registration, Madras Letter No.82592/C2/90 Dt. 27.12.90. 22344/C2/91 Dt. 8.11.91 and No.43221/C2/93 dt.28.7.93.

Order:-

- ...
2. ...
3. ...

Annexure

Notification

In exercise of the powers conferred by clause (a) of Sub-section (i) of Section 9 of the Indian Stamp Act, 1899 (Central Act 11 of 1899) the Governor of Tamil Nadu hereby makes the following amendment to the Revenue Department Notification No.11.i 2620 of 1964, dt. The 25th April, 1964 published at pages 1070-1073 of Part II Section 1 of the Fort St. George Gazette dt. The 17th June, 1964 as subsequently amended.

Amendment

In the said Notification, in item 38 for the proviso the following provisos shall be substituted, namely:-



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"Provided that a certified copy of the relevant records of the companies kept in the office of the Registrar of companies Madras is produced by the parties to the instrument to prove that the conditions above prescribed are fulfilled.

Provided further that the remission will apply only to cases of transfer of properties situated in the State of Tamil Nadu and to companies with their registered office in the State of Tamil Nadu".

10. The Government Order, as read, would demonstrate that it remits the dues so chargeable in respect of the instruments as described under Clause 38, reproduced *supra*. One more proviso was added to the same, that is, the remission will apply only to the case of transfer of properties situated in the State of Tamil Nadu and to the companies with the registered office in the State of Tamil Nadu.

11. In the year 1995, further condition was provided that apart from the properties, the registered office of the company also should be in the State of Tamil Nadu.



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12. As far as the condition requiring holding of more than 90% of the paid-up capital is concerned, in the show-cause notice itself, the District Registrar has also observed that the Deputy Registrar of Companies, Tamil Nadu, Chennai, in his letter dated 25.04.2005 addressed to the Joint Sub Registrar-II, Pattukottai, confirmed that M/s.Leela Scottish Lace Pvt. Ltd. is holding 96.3% of the paid-up capital of M/s.Design Creations (Mumbai) Pvt. Ltd. It is further observed that from the Annual Return made up to 29.09.2004, taken on record on 15.03.2005 by the Registrar of Companies, Chennai, the transferor company is holding 96.3% of the paid-up capital of the transferee company. Hence, condition 1 is satisfied. The said portion of the show-cause notice reads thus:

"The Deputy Registrar of Companies, Tamil Nadu, Chennai in his letter No.55526/PCTV/STA/209/A/2004 dated 25.04.2005 addressed to the Joint Sub Registrar-II, Pattukkottai has stated that M/s.Leela Scottish Lace Pvt. Ltd., is holding 96.3% of the paid up capital of M/s.Design Creations (Mumbai) Pvt. Ltd., it is also seen from the Annual Return made upto



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29.09.2004 taken on record on 15.3.2005 by the Registrar of Companies, Chennai that the transferor Company is holding 96.3% of the paid-up capital of the transferee company. Hence condition No.1 is satisfied."

13. In view of the above, there is no dispute that the authority was convinced of the requirement to be complied in Clause 38 of G.O.Ms.No.1224. The only dispute was of the registered office being shifted for a temporary period to the State of Tamil Nadu by the appellant.

14. It is settled proposition of law that in considering fiscal statutes, letters of the law shall have to be strictly applied.

15. The Apex Court in the case of **A.V.Fernandez** (*supra*) observed thus:

"In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance



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of the law. If the revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed, if, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter.”

16. In the case of ***Polester and Co. Ltd. etc vs. Additional Commissioner of Sales Tax, New Delhi³***, the Apex Court observed that a statutory enactment must ordinarily be construed according to the plain natural meaning of its language and that no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being unintelligible, absurd and unreasonable.

17. The Government Order and the subsequent amendment, read as it is, does not require a company seeking the benefit of the said Government Order to be registered for a particular length of
3 AIR 1978 SC 897



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time in the State of Tamil Nadu before the transaction or after the transaction. The executive policy only states that the properties shall be situated in the State of Tamil Nadu and the registered office ought to be in the State of Tamil Nadu. The same should be at the time when the transaction is entered into. The executive could have provided that for getting the benefit of the Government Order, the company should have the registered office for a particular length of time. However, the same is not provided.

18. The authority or the Court cannot add something in the Government Order which is not contemplated. The policy will have to be read as it is, without adding or subtracting anything to it. One may not apply the principle of Casus Omissus.

19. The properties in question are situated in the State of Tamil Nadu is not disputed. Also, the appellant and the fourth respondent had business activities in the State of Tamil Nadu. It has factories in the State of Tamil Nadu. For administrative purposes, it had its registered office in the State of Maharashtra. However, for a



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short period of three months, it has shifted its registered office to the State of Tamil Nadu, maybe to get the benefit of stamp duty remission. However, the same would not dis-entitle the appellant to get the benefit of the Government Order when all the conditions of the Government Order are complied with.

20. It is further for the State to provide for a policy. The policy only states that to get the benefit of the Government Order, the transferor company must hold 90% of the paid-up capital of the transferee company; the property must be situated in the State of Tamil Nadu and the company's registered office must be in the State of Tamil Nadu. All the three conditions are complied with.

21. In light of the above, denying the benefit to the appellant would be against the letters of the Government Order. Tax planning would be the facet to get the benefit of the Government Order. It would not be a case of evasion of the stamp duty. On the contrary, it would be a prudent planning by taking the benefit of the Government Order and having its registered office in the State of



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Tamil Nadu for the *interregnum* period.

22. In view of the aforesaid, the impugned judgment of the learned Single Judge and the orders of the first and second respondents are quashed and set aside. It is held that the appellant is entitled for the benefit of remission of stamp duty, as provided under the Government Order bearing G.O.Ms.No.1224 dated 25.04.1964 and as amended on 25.01.1995. If the appellant has paid the stamp duty, the same shall be refunded within a period of three months.

23. The writ appeal, accordingly, stands allowed. There shall be no order as to costs.

(S.V.G., CJ.)

(D.B.C., J.)

15.02.2024

Index : Yes/No
Neutral Citation : Yes/No

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To:

1. The Chief Controlling Revenue Authority
& Inspector General of Registration
Tamil Nadu, Mylapore
Chennai – 600 028.
2. The District Registrar (Administration)
Pattukottai.
3. Pattukottai Sub-Registrar Joint II
Pattukottai Tamil Nadu.



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THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY,J.

(drm)

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