



W.P. No.18226/2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.08.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. NO. 18226 OF 2013

And

M.P.NOS. 1 & 2 OF 2013

Association of National Exchanges
Members of India (ANMI)
"Ganga Griha", No.9,
Nungambakkam High Road,
4th Floor, Nungambakkam,
Chennai- 600 034.

.. Petitioner

- Vs -

1. State of Tamil Nadu
Rep by the Secretary to Government
Commercial Taxes and Registration
(J1) Department, Secretariat
Fort St.George, Chennai – 600 009.

2. The Inspector General of Registration
100, Santhome High Road
Chennai – 600 028.

3. Registration Training Institute
182, Bharathi Salai, Royapettah
Chennai – 600 014.

.. Respondents



W.P. No.18226/2013

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Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration to declare that contract notes issued by Petitioner Association are not liable to stamp duty under Article 5 of Schedule I to the Indian Stamp Act, 1899 (as applicable to the State of Tamil Nadu) and are to be stamped in terms of Art.43 of Schedule I to the Indian Stamp Act, 1899 (as applicable to the State of State of Tamil Nadu) and further that Article 5 would have no applicability to Currency Derivatives and consequently hold that impugned communications of the 2nd respondent issued to the National Stock Exchange of India Ltd. In Letter No.38391/C2/2011 dated 08.11.2011 and the subsequent clarification issued to the MCK Stock Exchange Ltd., in reference No.5139/C2/2013 dated 08.03.2013 by seeking to levy stamp duty under Article 5 of Schedule I to the Indian Stamp Act, 1899 (as applicable to the State of Tamil Nadu) on contract notes issued by members of the Petitioner Association and seeking to claim Stamp Duty on Currency Derivatives are arbitrary, illegal and ultra vires the provisions of the Stamp Act as applicable to State of Tamil Nadu.

For Petitioner : Mr.Rahul Balaji



W.P. No.18226/2013

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For Respondents : Mr.Haja Nazirudeen, AAG
for Mr.G.Krishna Raja, AGP

ORDER

This writ petition has been filed challenging the impugned order dated 08.11.2011 in and by which direction has been given to the members of the petitioner association to pay stamp duty in accordance with Article 5 of the Indian Stamp Act.

2. Learned counsel for the petitioner submitted that the petitioner is an Association of Stock Brokers registered in accordance with Section 25 of the Indian Companies Act, 1956. The objects of the petitioner are the welfare and improvement of capital markets, stock brokers as well as investors. The petitioner Association was registered in the year 1996 bearing Corporate Identification No.U67190MH1996GAP101555. The members of the petitioner are stock brokers who are carrying on business of trading in shares, securities, futures, options, etc., and these members are also members of various Stock Exchanges all over India. All the stock brokers in order to trade on stock exchanges, require to be registered with the Securities Exchange Board of India



W.P. No.18226/2013

WEB COPY

(SEBI) under the relevant rules. The stock brokers act as the agent for buying and selling the shares/securities on behalf of the client and thereafter send the “Contract Note” confirming the sale or purchase. The contract note evidencing such sale or purchase is not a bilateral agreement, but a Note sent by the Stock Broker intimating sale or purchase of the share or security and the said confirmation is either communicated electronically or in hard copy by post. The said contract note is clearly an instrument that falls within the description set forth in Article 43 of the Indian Stamp Act, 1899 (in short “the Act”) and the stamp duty is payable under such Article. Besides, the stock broker also undertake buying and selling in his own account, which is otherwise called “Proprietary Trading” where neither an agent nor a broker nor issuance of contract notes is envisaged or contemplated.

3. Learned counsel for the petitioner further submitted that with the advent of digital trading, all the contract notes are being sent electronically to the email ID of the client. Since, there is no possibility of affixing the stamps on digital contract notes, wherever a hard copy of the contract note was posted to



W.P. No.18226/2013

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the client, necessary stamps were affixed in accordance with the Article 43 of Schedule I of the Act. The petitioner accordingly complies with the requirements of payment of stamp duty. He further submitted that there is a SEBI specified form issued by the brokers for transactions undertaken on the client's account under Article 43 of the Act.

4. It is the further case of the petitioner that the present proceedings arising out of the letter dated 08.11.2011 from the 2nd respondent which is addressed to the National Stock Exchange of India, in turn, forwarded the same to the members of the petitioner Association vide circular No.77/2011 dated 02.11.2011 with the form issued by the SEBI, wherein an issue was raised with regard to non payment of stamp duty under Article 5(c)(1) of Schedule I to the Stamp Act and the contract notes are described in the paragraphs and it was alleged that the contract notes fell within the definition of the Stamp Act.

5. Admittedly, the petitioner association consists of members who are dealing with stock exchange brokerage and they act as Mediators in between the



W.P. No.18226/2013

WEB COPY

purchaser and seller and act as per the instructions of their clients. They purchase the shares and the same was intimated to the client by way of contract notes, for which, they have to pay stamp duty in terms of Article 43 of the Act. The second respondent passed the order directing SEBI to instruct the members of the petitioner Association to pay the stamp duty in terms of Section 5(c) of the Act on the transactions.

6. Learned counsel, referring to Section 5 (c) submitted that the aforesaid provision makes it clear that the agreement or MoU is between the purchaser and seller with regard to purchase or sale of securities, stocks or any other options and the members of the petitioner Association only act as intermediaries, even though records of these transactions were being maintained in electronic form by the members, it fell within the definition of document in terms of the General Clauses Act and the Information Technology Act. Therefore, he submitted that the members of the petitioner Association do not come under the category of purchaser under Article 5(c) and, therefore, the payment as contemplated under the aforesaid provision is not applicable to the



W.P. No.18226/2013

WEB COPY

members of the petitioner Association and the said provision is applicable only to the purchaser and seller.

7. It is the further stand of the petitioner that the members of the petitioner Association are chargeable only under Article 43 and they would not stand covered under Article 5 (c) of the Act. In this regard, learned counsel took this Court through the relevant Articles to submit that while Article 5 (c) relates to purchaser, Article 43 relates to the middlemen like the members of the petitioner Association and, therefore, the letter of the 2nd respondent demanding stamp duty from the members of the petitioner Association is wholly erroneous and clearly reveals non-application of mind to the relevant provisions of law.

8. Learned counsel for the petitioner, by relying upon Section 9-A (3) of the Act submitted that the provision is unambiguously clear and, therefore, letter of the 2nd respondent accordingly requesting the Exchange to instruct the members to pay stamp duty to the 1st respondent/Government of Tamil Nadu on the transactions of sale or purchase undertaken in respect of residents of Tamil



W.P. No.18226/2013

WEB COPY

Nadu every month at the time of monthly settlement of their account with the stock exchange is grossly misconceived.

9. It is the further stand of the petitioners that in response to the said communication, the petitioner made a representation to the 2nd respondent with regard to communication dated 08.11.2011 pointing out that Article 43 of the Schedule alone will be applicable to the case of the members of the petitioner Association, as they deal with “Notes of Memorandum” and they are in no way the beneficiaries, either as a seller or purchaser. As there was no response to the said representation, another representation dated 20.12.2012 was sent to the 2nd respondent. In spite of the two representations having been given, as there was no response to the same till date, the present writ petition has been filed.

10. To buttress the contentions advanced, learned counsel for the petitioner relied on the following judgments:

- (i) *Bharat Mohammad Hussain Saheb vs. District Registrar, Kurnool (IAR 1964 AP 43);*
- (ii) *Stamps vs. Breul & Co. (1944 (46) BOMLR 686);*



W.P. No.18226/2013

WEB COPY

- (iii) *Bombay Company Ltd. v. The National Jute Mills Co.Ltd.*
(1912 ILR (30) Cal 660);
- (iv) *The Superintendent of Stamps vs. Ramkrishnalal Dahyabhai* (1947) (49 BOMLR 277); and
- (v) *Sohanlal Pachisia & Co. vs. Bilasray Khemani and Ors.* (AIR 1954 Cal 179)

11. Learned Additional Advocate General appearing for the respondents submitted that representation of the petitioner requesting for restructuring the stamp duty on marketable securities could be done only by amending the Indian Stamp Act, 1899 or any reduction in stamp duty could be made only by passing of orders by the Government under Section 9A-(1)(a) of the Indian Stamp Act, 1899, the 2nd respondent could not give any relief sought for by the petitioner. However, a proposal to reduce the rate of stamp duty in respect of Article 5(c) of the Indian Stamp Act, 1899 has been sent by the 2nd respondent to the 1st respondent, which is under consideration of the 1st respondent. It is the further submission of the learned Addl. Advocate General that insofar as the applicability of exemption clause available under Article 5, due reply has been sent to the writ petitioner by the 2nd respondent under letter No.12001/C2/2012



W.P. No.18226/2013

WEB COPY

dated 04.03.2012. He further submitted that Article 5 and Article 43 of the Indian Stamp Act, 1899, as applicable in the State of Tamil Nadu, provides that the Broker note is issued after conclusion of the sale or purchase on behalf of the client by the broker, whereas, an agreement for sale or purchase of securities is entered between the broker and the client, wherein, the client asks the broker to sell or purchase a security at a specified price and the broker is bound to purchase or sell the security as per the directions of his client.

12. Heard the learned counsel for the petitioner and the learned Additional Advocate General appearing for the respondents and perused the materials available on record.

13. There is no quarrel with the fact that the petitioner is an Association and the members of the petitioner are brokers, who act as middlemen to hasten the process of dealing with the shares between the prospective sellers and buyers. The shares are sold through the members of the petitioner Association and the sale proceeds are paid to the prospective sellers by the buyers through



W.P. No.18226/2013

WEB COPY

the members of the petitioner Association, meaning thereby, that the beneficiary on monetary aspect with regard to the shares is only the seller and the buyer and the benefit to the members of the petitioner Association is only the brokerage charges and nothing more.

14. Though decisions have been relied on by the learned counsel for the petitioner, however, as the issue in the present case revolves around the provisions of law, which, even at first sight, is unambiguous and clear, it is not necessary to multiply this judgment by quoting decisions, as the provisions of law clearly proscribes the manner in which the authorities have to act. Therefore, this Court is not entering into detailing the decisions relied on behalf of the petitioner.

15. In this backdrop, the issue arises for consideration in the present writ petition is –

*“Whether the members of the petitioner Association,
who are brokers, viz., middlemen in the sale or purchase of*



W.P. No.18226/2013

securities, are bound to pay stamp due as per Article 5 (c) of the Schedule to the Act. “

16. Before proceeding to analyze the facts of the case to answer the issue, of necessity, the relevant provisions of the Indian Stamp Act, viz., Article 5 (c), 43 and Sections 2 (14) and 9-A (1)(3) which have a bearing on the case on hand, requires consideration and for better appreciation, the same are extracted hereunder:.

“Section 2 : Definitions :-

* * * * *

(14): “Instrument”-“instrument” includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded:

Section 9A : Instruments chargeable with duty for transactions in stock exchanges and depositories.—(1)

Notwithstanding anything contained in this Act,—

(a) when the sale of any securities, whether delivery based or otherwise, is made through a stock exchange, the stamp-duty on each such sale in the clearance list shall be collected on behalf of the State Government by the stock exchange or a clearing



W.P. No.18226/2013

WEB COPY

corporation authorised by it, from its buyer on the market value of such securities at the time of settlement of transactions in securities of such buyer, in such manner as the Central Government may, by rules, provide;

(b) when any transfer of securities for a consideration, whether delivery based or otherwise, is made by a depository otherwise than on the basis of any transaction referred to in clause (a), the stamp-duty on such transfer shall be collected on behalf of the State Government by the depository from the transferor of such securities on the consideration amount specified therein, in such manner as the Central Government may, by rules, provide;

(c) when pursuant to issue of securities, any creation or change in the records of a depository is made, the stamp-duty on the allotment list shall be collected on behalf of the State Government by the depository from the issuer of securities on the total market value of the securities as contained in such list, in such manner as the Central Government may, by rules, provide.

(2) Notwithstanding anything contained in this Act, the instruments referred to in sub-section (1) shall be chargeable with duty as provided therein at the rate specified in Schedule I and such instruments need not be stamped.

[Provided that no such duty shall be chargeable in respect of the instruments of transaction in stock exchanges and depositories established in any International Financial Services Centre set up under section 18 of the Special Economic Zones Act, 2005 (28 of



W.P. No.18226/2013

WEB COPY

2005).]

(3) *From the date of commencement of this Part, no stamp-duty shall be charged or collected by the State Government on any note or memorandum or any other document, electronic or otherwise, associated with the transactions mentioned in sub-section (1).*

Article 5 : AGREEMENT OR MEMORANDUM OF AN AGREEMENT—

(a) *if relating to the sale of a bill of exchange;*

(b) *if relating to the sale of a Government security or share in an incorporated company or other body corporate;*

(c) *if not otherwise provided for.*

Article 43: NOTE OR MEMORANDUM, sent by a Broker or agent to his principal intimating the purchase or sale on account of such principal—

(a) *of any goods exceeding in value twenty rupees;*

(b) *of any stock or marketable security exceeding in value twenty rupees; “*

(Emphasis Supplied)

17. Section 2 (14) defines “instrument” and sub-section (a) therein specifically provides the “instrument” to include every document, by which any



W.P. No.18226/2013

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right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded. Therefore, there is a clear prescription in sub-section (a) that a right or liability is created through the instrument, which is sold or purchased with the person, who is selling or purchasing the property. Therefore, the usage of the word '*liability*' clearly connotes that the person involved in the transaction would either be the seller or the buyer and not the intermediary.

18. Turning the attention back to Article 5 of the Schedule to the Stamp Act, it clearly provides for exemptions of which clause (a) therein relates to *sale of goods or merchandise exclusively, not being a NOTE OR MEMORANDUM* chargeable under No.43. Therefore, there is a clear exclusion with regard to note or memorandum, which is provided for under Article, as what is contemplated under Article 5 is Agreement or Memorandum of an Agreement relating to sale of a bill of exchange. It is to be pointed out that sale of a bill of exchange would be only between a buyer and a seller and the intermediary cannot be brought within the ambit of either the buyer or a seller, as the intermediary, like the members of the petitioner Association only helps in the



W.P. No.18226/2013

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process of the transaction and would have no liability with regard to the sale or a bill of exchange.

19. In the aforesaid backdrop, the members of the petitioner Association, not being the beneficiary of the instrument as provided for u/s 2 (14) and there exists no liability with them and that there is no agreement or memorandum of agreement between the buyer and seller with the regard to the sale of a bill of exchange with the intermediary, viz., in the present case, the members of the petitioner Association, Article 5 of the Schedule would not stand attracted to the case of the members of the petitioner Association and charging stamp duty on the instruments from the members of the petitioner Association by invoking Article 5 is grossly misconceived.

20. In this backdrop, as provided for under the head “Exemptions” in clause (a) of Article 5, there is a clear exclusion of Note or Memorandum as falling under Article 43 of the Schedule from within the ambit of Article 5. In this regard, a perusal of Article 43 of the Schedule to the Stamp Act, as has been



W.P. No.18226/2013

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extracted above, clearly reveals that stamp duty as provided for under Article 43 on Note or Memorandum is leviable on a broker or agent with regard to issuance of the said note or memorandum to his principle intimating about the purchase or sale on account of such principal. Therefore, any act of buying or selling done by the members of the petitioner Association and intimating of the said act to the principal by the members of the petitioner Association would attract Article 43 of the Schedule and the members of the petitioner Association would be liable to pay the stamp duty on such Note or Memorandum with regard to such intimation to the principal with regard to purchase or sale on account of such principal.

21. Further, as could be seen from Section 9-A (3) of the Act, no stamp duty shall be charged or collected by the State Government on any note or memorandum or any other document, electronic or otherwise, associated with the transactions mentioned in sub-section (1). Sub-section (1) provides that when any sale of securities is made through a stock exchange, the stamp duty on each such sale in the clearance list shall be collected on behalf of the State



W.P. No.18226/2013

WEB COPY

Government by the stock exchange or a clearing corporation authorised by it, from its buyer on the market value of such securities at the time of settlement of transactions in securities of such buyer in such manner as the Central Government may, by rules, provide. Therefore, stamp duty is chargeable only from the buyer and not from the intermediary like the petitioner, which is an association of members, who are doing broking business.

22. In the above backdrop of the provisions of law, a careful perusal of the letter of the 2nd respondent dated 8.3.2011, more particularly, para-2 of the said letter reveal that the 2nd respondent had stated as under :-

“As per Article 5 (C)(1) of the Indian Stamp Act as adopted by Tamil Nadu Government, stamp duty is to be levied on agreements or memorandum of agreements of the members of the stock exchanges for their transactions with their principles or with other members of the stock exchanges for both spot delivery of shares as well as for transactions relating to Futures and Options of all types at the rate of Rs.15 paisa (Rs.00.15) for every Rs.2500 or part there of the value of the security at the time of its purchase or sale.”



W.P. No.18226/2013

WEB COPY

23. However, as discussed above, the 2nd respondent has totally misconstrued the provision of Article 5 (c), where the inclusion is only insofar as it relates to a sale of bill of exchange by means of an agreement or memorandum of agreement is with or through a member. Therefore, it is clear that it pertains to a transaction be it directly or through the member, but is clearly relatable to sale. Further, the 2nd respondent has lost sight of the fact that there is a clear exemption insofar as note or memorandum chargeable under Article 43, which alone is relatable to intermediaries like the petitioner.

24. When the Act has specifically excluded the note or memorandum issued by the agent to the principal under Article 5 (c) and had included it in Article 43, under which provision alone, it is chargeable, the 2nd respondent cannot go beyond the prescription in the Act and direct the members of the petitioner Association to pay the charges under Article 5 (c) of the Schedule to the Act.

25. Further, it is to be pointed out that not only there is a clear exemption



W.P. No.18226/2013

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in respect of Agents under Article 5 of the Schedule, but the chargeability is created on the agents under Article 43 of the Schedule. If the stand of the 2nd respondents in charging stamp duty under Article 5 of the Schedule is to be accepted, then the charging of stamp duty under Article 43 of the Schedule on the very same agents would be nothing but double duty charged for a single transaction, which is impermissible. Only in the aforementioned backdrop, the Legislature had made a clear distinction in Article 5 and 43 by exempting the Agents under 5 while levying duty under Article 43 of the Schedule. Therefore, the stand of the 2nd respondent to levy stamp duty under Article 5 on the members of the petitioner Association is wholly erroneous and the same goes squarely against Article 43 of the Schedule.

26. Further, it is also to be pointed out that the instrument, as provided for u/s 2 (14) is relatable only to the buyer and seller and by no means, could it be extended to the agent as the instrument by which right or liability is created would only be on the buyer and the seller and definitely not on the agent. Therefore, Article 5 (c) of the Schedule to the Act would not stand attracted to



W.P. No.18226/2013

WEB COPY

the members of the petitioner Association or for that matter, any agent, who deals with instruments on behalf of the buyer or seller. In the aforesaid backdrop, directing payment of stamp duty on the instruments from the intermediaries, viz., the agents like the members of the petitioner association is grossly erroneous, arbitrary and unreasonable and the impugned communication dated 8.11.2011 cannot be sustained and the same deserves to be quashed.

27. In view of the discussion made above and the reasons aforesaid, this writ petition is allowed and the impugned communication of the 2nd respondent issued to the National Stock Exchange of India Ltd. in Letter No.38391/C2/2011 dated 8.11.2011 and the subsequent clarification issued to the MCX Stock Exchange Ltd. in reference No.5139/C2/2013 dated 8.3.2013 seeking to levy stamp duty under Article 5 of Schedule I to the Indian Stamp Act, 1899 on the contract notes issued by the members of the petitioner Association and seeking to claim stamp duty on currency derivatives is erroneous and the said communications are set aside. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.



WEB COPY



W.P. No.18226/2013

20.08.2024

Index : Yes / No

Msv/GLN



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W.P. No.18226/2013

To

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W.P. No.18226/2013

M.DHANDAPANI, J.

Msv/GLN

W.P. NO.18226 OF 2013

20.08.2024