IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **18.07.2024**

CORAM:

THE HONOURABLE MR.**JUSTICE R.SUBRAMANIAN**

AND

THE HONOURABLE MR.**JUSTICE R.SAKTHIVEL**

Writ Appeal No.886 of 2024
and CMP No.6227 of 2024

1. Inspector General of Registration,
   Registration Department,
   Government of Tamil Nadu,
   No.100, Santhome High Road,
   Pattinampakkam, Chennai 600 028,
   Tamil Nadu.

2. The District Registrar,
   Integrated Building for Officers of the
   Commercial Taxes and Registration Department,
   Fanepet, Nandanam,
   Chennai 600 035.

3. The Sub Registrar,
   Sub Registrar Office,
   No.475, Arcot Road, Udhayam Colony,
   Lambert Nagar, Virugambakkam,
   Chennai 600 083. ... Appellants

Vs.

InduInd Bank Limited,
Rep by its authorized Person,
New No.34, G.N.Chetty Road,
T.Nagar, Chennai 600 017. .. Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 13.04.2023 made in W.P. No.1775 of 2023.

For Appellants : Mr.L.S.M. Hasan Faizal, Additional Government Pleader

Respondent : Mr. R.Yashodvaradhan, Senior Counsel for M/s.K.Moorthy

JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The issue involved in the Appeal is, as to whether, the State can demand 0.6% of the value of the shares while registering a Deed of Amalgamation. The Stamp Duty payable for a Deed of Amalgamation is undoubtedly covered under Article-23 of Schedule-I of the Stamp Act.

2. The Hon'ble First Bench of this Court by its judgment dated 19.02.2024 rendered in WA No.758 of 2022 etc. batch, had framed the following questions for determination:

1. Whether or not the order of the Court sanctioning the *scheme of amalgamation/restructuring or merger can be deemed to be an instrument;*

2. Whether or not amalgamation/restructuring can be termed as a transfer inter vivos amounting to conveyance;

3. If the Orders are instruments amounting to conveyance, then whether the levy in the present manner, that is, prescription through an executive order is valid;

4. If so, the mode of computation, that is, 2% of the value of the immovable property or 0.6% of the net value of the shares transferred whichever is higher is in order;

5. Whether the retrospective application of the impugned Government Order with effect from 01.04.1956, by way of G.O.Ms.No.47 dated 19.02.2020 is valid;

6. Whether the stamp duty paid in other States, while registering the amalgamation orders are liable to be taken into account and set off as against the duty payable, while presenting the document for registration in the State of Tamil Nadu.

3. Of the above, only answers to question Nos. 3 and 4 would be relevant for our purposes. The question No.3 was answered as follows:

8. We have held that the order of sanction of amalgamation / restructuring is an ?'instrument'? of ?'conveyance'? and is liable to duty and is chargeable as per Article -23 of Schedule -I of the Act. Once it is chargeable at the rate of 5 % of the market value of the immovable property, then the state is enabled under Section 9 (1) of the Act which is extracted hereunder:-

"9. Power to reduce, remit or compound duties - Gazette, [(1)] [The Government] may, by rule, or order published in the Official Gazette,

(a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of [the territories under its administration], the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, by or in favour of any members of such class, are chargeable, and

(b) provide for the composition or consolidation of

duties [of policies of insurance and] in the case of issues by any incorporated company or other body corporate [or of transfers (where there is a single transferee, whether incorporated or not)] of debentures, bonds or other marketable securities.?

8.1 As far as the notification in G.O.Ms.No.29 dated 01.03.2019, it states that it is to reduce the duty chargeable under the Act. Therefore, the State of Tamil Nadu is well within its powers to reduce or remit the duty chargeable under the Act. So long as the power is exercised to reduce the duty chargeable under the Act, the same would be perfectly in order. When it is only a question of reduction or remitting, it can be by an Order passed in exercise of power under Section 9(1)(a) of the Act and accordingly we answer the question.

and question No.4 was answered as follows:

9. The impugned notification is extracted in para 2.3 above. While exercising the powers under Section 9(1)(a), reducing the duty from 5 % to 2 % of the market value of the property is a clear and fair exercise of power and it merely reduces the duty chargeable as per Article-23. As far as the *second limb of the notification, to compute the Stamp Duty on 0.6 % of the aggregate of the market value of the shares and then adopt the value whichever is higher is concerned, firstly it introduces a new mode of computation, which is not found in Article -23. Therefore, the same tantamounts to amending Article -23, which would require legislative action. Secondly, it was pointed out across the bar that there are several instances where the aggregate market value of the shares in respect of the transferee company which is amalgamated may run to several crores, whereas it may have an immovable property of a meagre value within the State of Tamil Nadu in which case, as per the notification if 0.6% of the aggregate market value of the shares which is higher would only be taken, then the same would result in increase in duty which would be more than 5 % of the duty chargeable under Article -23. Though on a consideration of the Judgment in* ***Li Taka Pharmaceuticals Ltd.,*** *case (cited supra)* ***and Delhi Towers Ltd.,*** *case (cited supra) it can be concluded that charging the instrument of amalgamation on the basis of the aggregate market value of shares would be an appropriate mode, in the* *absence of legislative act of amending Article-23, in the exercise of power or reduction under Section 9 (1)(a) of the Act, such a mode cannot be introduced. To that extent alone, impugned Government Order is without jurisdiction and is a colourable exercise of power.*

9.1 Therefore, to the last sentence of the notification contained in the impugned Government Order, in G.O.(Ms.) No.29 dated 01.03.2019, i.e.,'"or 0.6 percent of the aggregate of the market value of the shares, whichever is higher"? alone is struck down and rest of the notification shall stand. Accordingly we answer the question No. 4.

4. It would thus be clear that while the reduction of stamp duty from 5% to 2% was sustained, the alternative method of valuation viz. 0.6% of duty on the value of the shares was struck down. The notice impugned in the Writ Petition which is subject matter of the Appeal is dated 24.11.2022 and its seeks payment of deficit stamp duty by adopting the value of the shares and demanding 0.6% as stamp duty on the valuation of the shares.

5. This notice itself is directly in conflict with the judgment of the

Division Bench referred to supra. Once the enabling provision which enables the Government to charge duty on the basis of the value of the shares itself was struck down by the Division Bench, the impugned notice has to automatically go. The Writ Court has also expressed the same opinion.

6. Hence we do not see any reason to interfere with the pronouncement of the Writ Court, the Appeal fails and it is accordingly **dismissed**. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(R.SUBRAMANIAN, J.) (R.SAKTHIVEL, J.)
18.07.2024

jv
Index: No
Internet: Yes
Speaking order
Neutral Citation: No

To

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R.SUBRAMANIAN, J.

and

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(jv)

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