IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.31152 of 2019
and
W.M.P.Nos. 31273, 31274, 31276 and 31277 of 2019

M/s. Sri Cheran Synthetics India Private Limited.,
Represented by its Director,
Mr.V.S.Palanisamy,
Having Registered Office at
Door No. 24, Sankari Main Road,
Pallipalayam, Komarapalayam Taluk,
Namakkal District – 638 006. ...Petitioner

-Vs-

1. State of Tamil Nadu,
   Commercial Taxes and Registration (J1) Department,
   Represented by its Secretary,
   Secretariat, Fort St.George,
   Chennai – 600 001.

2. The Inspector General of Registration,
   No. 100, Santhome High Road,
   Chennai – 28.

3. District Revenue Officer (Stamps),
   District Collector Office,
   Namakkal.

4. The Sub-Registrar,

Komarapalayam,
Namakkal District – 638 183. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorari, calling for the records relating to the impugned Circular dated 20.11.2018 bearing No. 49282/P1/2018 issued by the second respondent and quash the same as illegal, arbitrary and ultra vires the provisions of the Registration Act, 1908.

For Petitioner : Mr.S.R.Raghunathan

For R1, R2 & R4 : Mr.P.Anandakumar
Government Advocate

For R3 : Mr.K.Surendiran
Additional Government Pleader

ORDER

This writ petition is filed seeking for issuance of certiorari to quash the impugned Circular dated 20.11.2018 bearing No. 49282/P1/2018 issued by the second respondent as illegal, arbitrary and ultra vires.

2. The case of the petitioner is as follows:-

2.1 Shri Giri Spinning Mills (India) Private Limited and the Petitioner herein stood merged and amalgamated vide common order dated 04.09.2015 passed by this Court in C.P. Nos. 158 and 159 of 2015.

Similarly, Best Cheran Spintex India Private Limited and the Petitioner herein stood merged and amalgamated vide order dated 25.07.2017 in Form No. CAA12 of 2017 passed by the Regional Director, Ministry of Corporate Affairs.

2.2 The second respondent had issued a Circular bearing No. 49282/P1/2018 dated 20.11.2018, which reads as follows:

> *"3) Thus the aforesaid judicial pronouncements lead to the following conclusions:*
>
> *(i) Scheme of arrangements submitted by companies and sanctioned by High Court/registered by competent authorities evidencing transfer of property are classifiable under Article 23 of the Indian Stamp Act, 1899.*
>
> *(ii) Consequently such instruments/ copy of instrument when presented for registration shall not be registered unless it is unequivocally evident that original instrument is duly stamped.*
>
> *(iii) If such instrument is found to be not duly stamped, the instrument presented shall be returned to the Presentant, by clearly explaining the aforesaid legal position through a check slip, and also requiring the presentant to produce evidence as to the duly stamping of the original instrument."*

2.3 It had come to the knowledge of the Petitioner that the first respondent had revised the above Circular by issuing G.O. (Ms) No.29 dated 01.03.2019 stating that the stamp duty on property transfer in respect of amalgamation or reconstruction of companies will be fixed at 2 percent of the market value of the immovable property or 0.6 percent of the aggregate of the market value of the shares, whichever is higher. When the representatives of the petitioner had approached the third respondent, the petitioner was directed to execute and register Deeds to transfer the immovable property relating to amalgamation as per G.O. (Ms) No. 29 dated 01.03.2019. Therefore, accordingly, the petitioner and the Shri Giri Spinning Mills (India) Private Limited had entered into a Deed dated 03.04.2019 and the Petitioner had entered into another Deed dated 02.05.2019 with Best Cheran Spintex India Private Limited.

2.4 The Petitioner had paid the stamp duty the rate of 2% of the market value of the immovable properties to the tune of Rs.18,57,695/- on the deed dated 03.04.2019 and Rs.28,69,470/- on the deed dated 02.05.2019 respectively in terms of the G.O.(Ms).No.29, dated 01.03.2019, without prejudice to its rights and presented the same for registration.

2.5 However, to the shock of the petitioner, the third respondent orally informed the representative of the petitioner that the petitioner had to pay stamp duty at 5% of the market value of the immovable properties, without assigning any reasons for the same, contrary to G.O (Ms) No. 29 dated 01.03.2019.

2.6 The aforementioned Deeds along with the Schemes of amalgamation have been presented before the third Respondent but have been kept pending since 26.03.2019 and 27.04.2019 and have been assigned pending Reference P/Kumarapalayam/10/2019 and P/Kumarapalayam/15/2019, respectively. Thereafter, the petitioner filed a Writ Petition in W.P. No. 29729 of 2019 before this Court seeking for a direction to direct the Sub-Registrar, third respondent therein, to register and release the Deeds of Transfer of Immovable Properties Relating to Amalgamation dated 03.04.2019 and 02.05.2019 within a timeframe. The said Writ Petition is pending adjudication.

2.7 Since the third respondent herein had refused to release and register the aforementioned Deeds, the petitioner has come forward with the present writ petition.

3. The learned counsel for the petitioner submitted that already this Court by interim order in W.M.P.No. 31276 of 2019 in W.P.No. 31152 of

2019 dated 05.11.2019 has recorded that the petitioner has paid the stamp duty at the rate of 2% and the same is extracted hereunder:-

> *"1. The petitioner herein has paid stamp duty at the rate of 2% of the market value for the documents presented on 03.04.2019 and 02.05.2019. The circular of the second respondent dated 20.11.2018 is challenged in the main writ petition.*
>
> *2. In view of the fact that the petitioner has paid stamp duty at the rate of 2% for the document presented by him and numbered as P10 of 2019 and P15 of 2019, the fourth respondent is hereby directed to register the document and return the same subject to outcome of the main writ petition. The said direction shall be complied within a week from the date of receipt of a copy of this Order."*

4. The learned counsel for the petitioner further submitted that the first bench of this Court in W.A.No. 758 of 2022 etc., (batch) has upheld the circular issued by the respondents which is the subject matter in this Writ petition and the same is exacted hereunder:-

> "12. In the result, the Writ Appeal Nos.758, 687, 751, 755 & 851 of 2022, Writ Petition (MD) No.1824 of 2019 and Writ Petition Nos.31650 & 31651 of 2016, 8511 and 31191 of 2019, 18188 of 2020, 21977, 21979 & 22562 of 2021 and 30363 of 2023 are disposed of, on the following

terms;

(i) the Circular No.49282/P1/2018 dated 20.11.2018 is upheld;

(ii) the G.O.(Ms.) No.29 dated 01.03.2019 is quashed in as much as portion of the notification "or 0.6 percent of the aggregate of the market value of the shares, whichever is higher" and in all other aspects the said G.O. (Ms.) No.29, dated 01/03/2019 shall be valid;

(iii) the G.O.(Ms.) No.47 dated 19.02.2020 is held valid;

(iv) Accordingly, the authorities will be entitled to collect the stamp duty by calculating 2% of the market value of the immoveable property and excess duty if any collected shall stand refunded to the writ petitioners;

(v) The Stamp Duty if any paid, while presenting the order / scheme relating to amalgamation in other States shall be taken into account, while calculating the Stamp Duty payable in the State of Tamil Nadu and after setting off the amount already paid, only the balance amount if any alone can be demanded;

(vi) in Writ Petition No.31191 of 2019, pursuant to the interim orders of this Court, the petitioner has deposited a total sum of Rs.4,56,55,000/-. Already, by order, dated 16.11.2023, the petitioner was permitted to withdraw the sum of Rs.3,25,47,198/-. As contained in Clauses – (iv) and (v) of the judgment above, the respondent shall proceed to determine the 2% of market value of the immovable property and after giving credit to the amount paid by the petitioner, while registering the scheme in the State of Maharashtra, the balance, if any shall be paid back to the petitioner within a period of 12 weeks from the date of receipt of a copy of this judgment"

6. In view of the above, this writ petition is disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

27.06.2024
1/2

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Index:Yes/No
Speaking Order : Yes/No
Neutral case citation: Yes/No

<u>J.SATHYA NARAYANA PRASAD, J.</u>

nsl

To

1. The Secretary,
   Commercial Taxes and Registration (J1) Department,
   Secretariat, Fort St.George,
   Chennai – 600 001.

2. The Inspector General of Registration,
   No. 100, Santhome High Road,
   Chennai – 28.

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1/2