IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.31022 of 2018
and
W.M.P.Nos.36197, 36198 & 36199 of 2018

1.M/s.Mahindra World City Developers Limited,
a Company registered under the Companies Act, 1956,
(previously known as Mahindra Industrial Park Limited)
having its Registered Office at Mahindra Towers,
17/18, Patulous Road,
Chennai – 600 002.

2.M/s.Mahindra Integrated Township Limited,
a Company registered under the Companies Act, 1956,
having its Registered Office at The Canopy, Block A,
First Floor, Second Avenue, Mahindra World City,
Chengalpattu – 603 002.

3.2.M/s.Mahindra Residential Developers Ltd.,
a Company registered under the Companies Act, 1956,
having its Registered Office at Administrative Block,
Mahindra World City Sub (PO),
Chengalpattu – 603 002. ...Petitioners

-Vs-

1.The Chief Controlling Revenue Authority-cum-
Inspector General of Registration,
Santhome High Road,
Mylapore, Chennai – 600 004.

2.The District Registrar,
Registration Department
Chengalpattu.

3.The Joint II Sub-Registrar,
Registration Department,
Chengalpattu. ...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 Certiorarified Mandamus, calling for the records relating to the proceedings in Letter No.42393/C2/2018 dated 08.11.2018 on the file of the first respondent declining stamp duty exemption in respect of lease deeds/agreements/instrument executed by the petitioners in terms of Section 3(3) of the Indian Stamp Act which stood amended by virtue of Section 57 of the SEZ Act on 10.02.2006, quash the same and consequently direct the respondents to receive, admit, register and release all the lease deeds/agreements without demanding stamp duty as and when presented for registration by the petitioners before third respondent and pass such further orders.

For Petitioner	:	Mr.Mr.R.Bharath Kumar
For Respondents	:	Mr.P.Ananda Kumar Government Advocate

O R D E R

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings in Letter No.42393/C2/2018 dated 08.11.2018 on the file of the first respondent declining stamp duty exemption in respect of lease deeds/agreements/instrument executed by the petitioners in terms of Section 3(3) of the Indian Stamp Act which stood amended by virtue of Section 57 of the SEZ Act on 10.02.2006, quash the same and consequently direct the respondents to receive, admit, register and release all the lease deeds/agreements without demanding stamp duty as and when presented for registration by the petitioners before third respondent.

2. The facts of the case in a nutshell:-

2.1 The first Petitioner Mahindra World City Developers Limited, (previously known as Mahindra Industrial Park Limited) was promoted at the initiative of the Government of Tamil Nadu with the objective of promoting an Industrial Park pursuant to G.O.2 (D) No.88 dated 11.06.1997 in partnership with Tamil Nadu Industrial Development Corporation (TIDCO). The Mahindra World City Industrial Park is located over a land extent of about 1550 acres. Out of this, a land extent of about 850 acres has been notified as a Special Economic Zone by the Government of India. The SEZ comprises of "Processing Area" where the industries are setup/located for activities being the manufacture of goods or services and the area exclusively for trading or warehousing purposes and the "Non-Processing Area" where the business support services and social purposes such as educational institutions, hospitals, hotels, recreation and entertainment facilities, residential and business complexes are located.

2.2 The first Petitioner has been approved as a SEZ Developer by the Board of Approval, Ministry of Commerce and Industry, Government of India vide Letter of Approval 08.09.2004. The first Petitioner has developed SEZ over lands admeasuring about 850 acres out of 1550 acres owned by them. With the coming into force of the SEZ Act, the first Petitioner was granted permission by the Board of Approval, Ministry of Commerce and Industry.

2.3 The first Petitioner executed lease deeds in favour of second and third Petitioners in respect of the lands totally measuring 218.982 acres from and out of the 850 acres owned by them by means of various registered lease deeds for the purpose of development of residential facilities in the non-processing area of the SEZ. The second and third Petitioners are duly approved Special Economic Zone Co-Developers recognised by the Board of Approval, Ministry of Commerce and Industry, Government of India by letters of approval dated 14.02.2007 and 24.08.2008 whereby the authorized operations of the second and third Petitioners are to develop residential facilities in the non-processing area of Special Economic Zone (hereinafter referred to as 'SEZ') and lease out completed infrastructure facilities along with vacant lands appurtenance thereto in terms of Rule 11(10) of the SEZ Rules. As part of their authorized operations, the Petitioners herein entered into instruments (lease deeds) for the lease of residential and commercial units with its customers/Lessees.

2.4 The first Respondent herein, vide letter dated 27.9.2006 have communicated to all Deputy Inspector General of Registration, District Registrars and Sub-Registrars about the notification of the SEZ Act 2005 in Tamil Nadu Government Gazette dated 14.09.2006 and for their necessary action by referring to the Government Letter dated 21.08.2006. Further the first Respondent herein vide letter dated 23.09.2008 took up the issue with the Commercial Taxes and Registration Department suggesting that the Government may consider to issue a separate notification in respect of the first Petitioner's SEZ. In response to such request, the Government of Tamil

Nadu in the Commercial Taxes and Registration Department vide its Letter No. 12860/11/2008-3, dated: 24.10.2008 issued necessary instructions to all concerned about the statutory provisions of the Special Economic Zones Act, 2005 and the Special Economic Zones Rules, 2006 and also for instructions to the concerned Sub-Registrar Office to register the documents executed for the purposes of the petitioners' SEZ by allowing the stamp duty exemption as per proviso 3 to Section 3 of the Indian Stamp Act, 1899. Further the first Respondent herein vide circular dated 20.11.2009 had issued general clarifications and instructions to the effect that stamp duty exemption is available for lands and building provided the lands are notified under the SEZ Act. The said notification also clarified that registration fee is payable for the buildings on such SEZ notified lands.

3. Learned counsel for the petitioner submitted that consequent to such instructions, the Petitioners' customers entered into lease deed only on the basis of the exemption granted in payment of stamp duty. All along, the Respondents have granted exemption in payment of stamp duty by relying on a Circular issued by the Inspector General of Registration, which was issued pursuant to the clarifications issued by the Government of Tamil Nadu, represented by its Secretary, Commercial Taxes and Registration Department

for grant of stamp duty exemption. The Circulars dated 23.09.2008, 24.10.2008, 10.11.2008, 20.11.2009 were Issued by the first Respondent herein instructing the Subordinate Officers to grant exemption from payment of stamp duty if the instruments relate to land and building situate in SEZ Zone and for the purpose of carrying out SEZ activities. The lease deeds/agreements executed by the Petitioners in respect of a non-processing area of SEZ are exempted from payment of stamp duty provided in Section 3 of the Indian Stamp Act, 1899. An amendment to Section 3 of the Indian Stamp Act was effected by Section 57 of the SEZ Act on 10.02.2006. Pursuant to such amendment, Part III of the Third Schedule to the SEZ Act amendment to the Indian Stamp Act, 1899 has been effected. By virtue of such amendment, any instrument executed by a SEZ Developer or Co-developer shall not be chargeable with any stamp duty. The first Petitioner is a SEZ Developer and second and third Petitioners are SEZ Co-Developers. As per Sec. 2 (g) of the SEZ Act, Developer includes Co-Developer also.

4. Learned counsel further submitted that in terms of Rule 11 (10) of the SEZ Rules, the Petitioners can lease out the completed infrastructure (residential/commercial premises) developed in the non-processing area of SEZ in favour of any person and there is no embargo or restriction for the

same in the SEZ Act or Rules. In such circumstances, the instruments presented for registration by the Petitioners, in respect of completed infrastructure in a non-processing area within the SEZ, are exempted from payment of stamp duty. While so in the year 2015, the third Respondent declined to grant stamp duty exemption to a lease deed 06.04.2015 executed by the third Petitioner in favour of a customer Deepti Ahuja citing certain Audit remarks and also relying on Instruction No.18 dated 02.07.2009 and Instruction No. 65 dated 27.10.2010 and referred the issue to the second Respondent for further action. The second Respondent passed an order dated 04.08.2015 concluding that the lease deed dated 6.4.2015 is not exempted from payment of stamp duty. Aggrieved by the same, the said Deepti Ahuja filed a revision before the first Respondent. The first Respondent/Revisional Authority filed a revision the free Ahuja in the revision, concluded that she is either an employee nor an unit in the SEZ or an entity permitted to carry out operation within the SEZ as per the SEZ Rules and rejected the statutory revision preferred by the Petitioner. the said customer Deepti Ahuja filed Writ Petition No.211/2016 on the file of this Court challenging the non-grant of stamp duty exemption by the first Respondent. This Court was pleased to allow the said WP by its order dated 20.07.2016 and quashed the order of rejection passed by the Respondents 1 and 2 herein and consequently directed the third Respondent herein to register and release the lease deed within two weeks.

5. Learned counsel further submitted that pursuant to the said order dated 20.07.2016, the third Respondent registered the lease deed without demanding stamp duty and released the lease deed to the said customer. The Respondents again allowed exemption of stamp duty in respect of instruments (lease deed and agreement) executed by the Petitioners till about August, 2018. However after a new officer has taken over the charge of the office of the third Respondent sometime in August, 2018, he refused registration of lease deeds and agreements, executed by the Petitioners-2 to 3 herein. The Petitioners have taken up the issue with the first Respondent and submitted a written representation dated 18.09.2018 requesting the first Respondent to issue necessary direction to the third Respondent for allowing registration of instruments executed by the Petitioners. In the meanwhile, the third Respondent issued a Memo dated 24.09.2018 stating that the first Respondent has filed an appeal against the order dated 20.07.2016 passed in W.P.No.211/2016 of Deepti Ahuja case. However, the petitioner understand no notice has been served on the Writ Petitioner till the date of filing of this Writ Petition. However the first Respondent has passed the impugned order

on 08.11.2018 stating that lease deeds executed by the Petitioners prior to 02.01.2015 are eligible for stamp duty exemption in accordance with Sec.3 (3) of the Indian Stamp Act, 1899 and lease deeds executed on or after 02.01.2015 are not eligible for stamp duty exemption by relying on Rule 11A(2) of SEZ Rules notified on 02.01.2015 thereby completely ignoring the provisions of Sec.3 (3) of the Indian Stamp Act, 1899 which stood amended with effect from 10.02.2006 by virtue of Sec.57 of the SEZ Act. The impugned order is contrary to the provisions of the Sec.3 (3) of the Indian Stamp Act, 1899 which stood amended with effect from 10.02.2006 by virtue of Sec. 57 of the SEZ Act and also would affect those instruments executed by the Petitioners which were duly registered and released to various Lessees.

6. Learned counsel further submitted that this Court categorically observed that so long as the instrument is executed by the Developers and Co-Developers and such instruments relates to the non-processing area of the SEZ, they are eligible for stamp duty exemption as per the provisions of the Sec.3 (3) of the Indian Stamp Act, 1899. However the first Respondent has ignored the same and passed the impugned order arbitrarily. Therefore, the petitioner has filed this writ petition.

7. In addition to the above submission, the learned counsel for the petitioner relied upon the judgment passed by the Division Bench of this Court in **W.A.Nos.1940 & 2058 of 2019 dated 22.07.2019**.

8. A counter affidavit was filed on behalf of the third respondent dated 25.01.2019.

9. Heard both sides and perused the materials placed on record.

10. In view of the above ratio laid down by the learned counsel for the petitioner in ***W.A.Nos.1940 & 2058 of 2019 dated 22.07.2019, The Chief Controlling Revenue Authority-cum-Inspector General of Registration, Santhome High Road, Chennai – 28 Vs. Deepti Ahuja***, wherein the Division Bench of this Court held as follows:

> *"9. The exemption provided under Sub-section (3) of Section 3 of the Indian Stamp Act,1899, is clear and in harmony with the provisions of the Special Economic Zones Act,2005, which clearly stipulate and grant such exemption on the property developed by the developers or codevelopers within the specified SEZs."*

11. Taking into consideration the above factual matrix of the

case and the ratio laid down by the Division Bench of this Court, the proceedings vide Letter No.42393/C2/2018 dated 08.11.2018 issued by the first respondent is hereby set aside and the writ petition stands allowed with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

28.06.2024

cda
Index : Yes/No
Speaking / Non-Speaking Order

To

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Inspector General of Registration,
Santhome High Road,
Mylapore, Chennai – 600 004.

2.The District Registrar,
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Chengalpattu.

3.The Joint II Sub-Registrar,
Registration Department,
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J.SATHYA NARAYANA PRASAD, J.

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