BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.19905 of 2018
and
W.M.P.(MD)No.17688 of 2018

M/s.Savorit Unavugal Limited,
Represented by its Director,
Mr.G.Murugesan,
Registered Office at New No.31,
1st Floor, Lazarus Church Road,
R.A.Puram, Chennai-600 028. ... Petitioner

Vs.

1.The Joint-1 Sub Registrar,
Collectorate Building,
Dindigul-624 004.

2.The District Registrar,
Collectorate Building,
Dindigul-624 004.

3.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai-600 004. .... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the 1st respondent: - (A)(i) to remove the remarks mentioned in the Encumbrance certificate No.2538 dated 17/05/2018 in respect of the sale deed doc.No.1546/2000 with regard to "as per the 8/2000 monthly audit finding an amount of Rs.33,35,990/- (Rupees thirty three lacs thirty five thousand nine hundred and ninety only) to be payable towards deficit stamp duty" and (ii) to refund the amount received proportionately from the Vendors/Purchasers in respect of the deficit stamp duty amount of Rs.33,35,990/-.

For Petitioner : Mr.R.Devaraj
for Mr.Saravanan
For Respondents : Mr.P.Subbaraj
Special Government. Pleader

ORDER

The petitioner has filed this writ petition seeking to remove the remarks mentioned in the encumbrance certificate No.2538 dated 17.05.2018 in respect of the sale deed in document No.1546/2000 regarding deficit stamp duty to the tune of Rs.33,35,990/- and to refund the amount received proportionately from the subsequent vendors/purchasers as stamp duty.

2.The case of the petitioner is that initially the petitioner company was functioning in the name and style of 'Savorit Oils Limited'. Thereafter, the petitioner company was changed as Savorit Unavugal Limited as per the fresh certificate of incorporation dated 04.04.2014 issued by the Registrar of Companies (ROC), Chennai. The petitioner-company was fully owned subsidiary company of M/s.Savorit Limited as per the Certificate dated 27.03.2000 issued by the Registrar of Companies. Hence, exemption from paying stamp duty was sought as per the Government Order in G.O M.S.No.1224, Revenue dated 25.04.1964 (No. 38). The relevant clause of the said Government Order is as follows:

> *"Stamp duty is exempted in a case;*
>
> *(ii)where at least 90 percent 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% of the issued share capital of the other; or*
>
> *(iii)where the transfer takes place between two subsidiary companies of each of which not less than 90 percent of the share capital is in the beneficial ownership of a common parent company;*
>
> *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."*

3.The petitioner had purchased the land and building from M/s.Savorit Limited. The sale document was kept as a pending document in Doc.No. 160/2000. After satisfaction of the Government Order and the certificate from the Registrar of Companies regarding exemption of the stamp duty, the first respondent issued a registered sale deed in Document No.1546/2000. Thereafter, the petitioner sold the property to various persons. When the petitioner came to know about the remarks, he applied for encumbrance certificate (EC) before the first respondent. The petitioner was shocked to know that entry was made on 17.04.2018 to the effect that as per the monthly audit finding, an amount of Rs.33,35,990/- is to be paid towards deficit stamp duty in respect of the sale document No.1546/2000, by the petitioner. Challenging the same, this writ petition came to be filed.

4.The learned counsel for the petitioner submitted that the rectification deed was registered in the year 2013 vide document No.3008/2013. After 18 years of the registration of the Document No.1546/200, entry regarding deficit stamp duty has been recorded. He further submitted that no opportunity was given to the petitioner before making such entry. The learned counsel for the petitioner further submitted that as per G.O.Ms.No.1224, Revenue, dated 25.04.1964, the petitioner company will have to be exempted from payment of stamp duty. The petitioner has given a representation in this regard but the same has not been considered. Hence, the writ petitioner has filed this writ petition.

5.The respondents have filed counter affidavit stating that since the subsequent purchasers have already paid the stamp duty, the petitioner cannot maintain the prayer for refund of the amounts paid by them and the writ petition is not maintainable without impleading the subsequent purchasers as party respondents. It was further submitted that the petitioner has not furnished any specific materials relating to the document numbers, the parties to the said documents, stamp duties paid and the acknowledgment for such payment to show that who has paid the amounts in respect of the stamp duty for the subsequent years.

6.It is further submitted that initially, the Savorit Oils Limited claimed exemption as per G.O.Ms.No.1224/64, Revenue Department, dated 25.04.1964. The then Sub Registrar, Dindigul kept the said sale deed dated 16.10.2000 as pending Document No.160/2000 and thereafter, on 23.10.2000 registered the same as Doc No.1546/2000. In the audit conducted for the subsequent years, it was found that the copy of the extract of Register maintained by the Registrar of Companies showing that the parent company is holding 90% issued share capital of the subsidiary company and certificate of Registration of the companies under the Companies Act, 1956 have not been filed during registration. Therefore, the then District Registrar of the office of the second respondent in his letter dated 22.08.2014, has asked the vendor viz., M/s.Savorit Limited to submit the following documents:

> “ *(i)Certificate of Registration of the Companies;*
>
> *(ii)Documentary evidence with regard to the 90% share holding the Head Company in the Sister Company; and*
>
> *(iii)Copy of the Balance Sheet of M/s.Savorit Limited, for the year 2000.”*

7.On receipt of the letter of the second respondent, the Savorit Limited had sent a reply dated 26.08.2014 along with the certificate of Registrar of Companies and the balance sheet for the relevant year. It was submitted by the respondents that the certificate of registration in respect of both companies namely, M/s.Savorit Limited and M/s.Savorit Oil Limited have not been furnished. Further, the certificate to show that the M/s.Savorit Oil Limited is a fully owned subsidiary Company of M/s.Savorit Limited appears to be obtained only at a later point of time. Therefore, the entry regarding deficit stamp duty has been made in the encumbrance certificate.

8.Heard the learned counsel appearing on either side and perused the materials placed on record.

9.The learned counsel for the petitioner contended that G.O.Ms.No.1224 of 1964 dated 25.04.1964 was upheld by the Division Bench of this Court in W.A.No.643 of 2023 vide order dated 15.02.2024. Therefore, once the petitioner comes within the ambit of the said Government Order and the document has been registered, making an entry in the encumbrance certificate regarding deficit stamp duty that too after 18 years of such registration cannot be sustained in law and the same has to be removed. The learned counsel for the petitioner submitted that from the subsequent purchasers, deficit stamp duty had been collected. Therefore, the same has to be refunded besides removing the entries made in the encumbrance certificate.

10.The learned Additional Government Pleader for the respondents contended that the entry has been made pursuant to the audit objections at the relevant point of time. The copies of the required documents under G.O.Ms.No. 1224/64 produced by the petitioner was obtained only at later point of time. Therefore, the entries has been made based on the audit objections. Further, the petitioner cannot claim refund of the amount, since the he has not paid any amount towards stamp duty. The deficit stamp duties were collected only from the subsequent purchasers not from the petitioner.

11.The basic facts are not in dispute. The authorities have entertained a doubt about the documents and came to the conclusion that the documents appear to be obtained later and petitioner Company was not entitled to exemption as per G.O.Ms.No.1244/64 and made an entry in the encumbrance certificate with regard to deficit stamp duty. It is relevant to note that the entry relating to stamp duty is made only in the year 2018 that is after 18 years of registration. It is not the case of the respondent that no documents evidencing certificate of the Registrar of Companies and document with regard to 90% share holding the petitioner's companies and its sister companies and balance sheet of the petitioner's companies in the year 2000, were submitted to them. The only contention of the respondent is that the documents submitted by the petitioner appears to be obtained only at later point of time, since, according to them, there is a minor correction in respect of the year in the certificates/documents produced by them.

12.It is to be noted that the authorities could have very well verified the certificate with the Registrar of Companies then and there, if they have any doubts over the said certificate. They did not do so. Having registered the document in the year 2000, after some time, the respondent sought some documents for verification during audit objection. Once the documents have been produced, the authorities ought to have called for records from the Registrar of Companies and thereafter, proceeded to pass orders. But no such attempts whatsoever have been made. Therefore, I am of the view that without any basis, merely on the basis of the doubt entertained by the authorities concerned, orders cannot be passed regarding deficit stamp duty that too after 18 years of registration.

13.Without arriving at a definite conclusion about the certificate produced in the year 2014 and without any basic materials, it cannot be stated that those documents are not correct. The counter affidavit itself indicates that on 12.04.2005 itself, all the documents were produced by the writ petitioner. Therefore, the subsequent reasons assigned by the respondents clearly indicate that the same has been generated in order to substantiate their stand taken in the audit objections.

14.Therefore, this Court is of the view that when the petitioner has already established his case for exemption under G.O.Ms.No.1224/64, the entry with regard to deficit stamp duty ought not to have been made in the encumbrance certificate after 18 years and it is liable to be removed. Accordingly, the entry made in the encumbrance certificate is directed to be removed by the ahorities concerned forthwith. As far as refund of the amount is concerned, the petitioner seeks refund of deficit stamp duty collected from the other purchasers. The petitioner cannot seek refund of the amount paid by the subsequent purchasers. It is seen that the purchasers did not raise any objection for paying deficit stamp duty and they have not sought refund of the same. Accordingly, this Court is not inclined to entertain the relief sought for by the petitioner for refund of amount and it is dismissed.

15.In view of the above deliberations, this writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

16.08.2024

NCC : Yes/No
Index : Yes/No
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N.SATHISH KUMAR, J.

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