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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 5921/2023

MS SREE GOKULAM CHIT AND FINANCE CO. (P) LTD.
..... Petitioner

Through: Mr. Vipin Pillai, Advocate.

versus

OFFICE OF COLLECTOR STAMPS & ANR. ..... Respondents

Through: Mr. Satyakam, ASC for GNCTD with Mr. Pradyut Kashyap, Advocate.

\+ W.P.(C) 6445/2023

MS SREE GOKULAM CHIT AND FINANCE CO. (P) LTD.
..... Petitioner

Through: Mr. Vipin Pillai, Advocate.

versus

OFFICE OF COLLECTOR STAMPS & ANR. ..... Respondents

Through: Mr. Satyakam, ASC for GNCTD with Mr. Pradyut Kashyap, Advocate.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **19.02.2024**

1. The Petitioner has approached this Court challenging the Order dated 09.06.2016 passed by the Respondent No.1 whereby the refund of stamp duty was denied due to delay in filing an application for refund.

2. Material on record discloses that the Petitioner had purchased an E-Stamp Certificate Bearing No. IN-D164751295076626P dated 16.12.2017

for sum of Rs.2,28,000/- for execution of the sale deed dated 16.12.2017. Material on record further discloses that there were disputes between the Petitioner and the seller regarding the execution of the said sale deed. The Petitioner, thereafter, filed a suit bearing No.2179/2018 for specific performance and ultimately, the suit was compromised between the parties on 28.08.2020. It is stated that the settlement arrived at between the parties was recorded before the Court and the suit was disposed of as settled on 19.09.2020.

3. It is stated that, thereafter, the Petitioner filed an application on 22.12.2020 for refund of the stamp amount which was not considered by the Respondents because of the fact that the application was filed beyond six months after the date of the instrument. It now transpires that pursuant to the filing of the present writ petition, the application of the Petitioner for refund of stamp amount has been rejected *vide* Order dated 11.09.2023 passed by the Collector of Stamps, GNCTD in light of Section 50 of the India Stamp Act, 1899.

4. Learned Counsel appearing for the Petitioner places reliance upon a Judgment passed by a Division Bench of this Court in Citius Real Estate (P) Ltd. vs. Union of India And Another, **2023 SCC OnLine Del 7514** to contend that the Order rejecting the application of the Petitioner cannot sustain in view of the said Judgment. The relevant portion of the said Judgment reads as under:

> ***"60.*** *The question that arises is that what would be the period of limitation if the provisions of Section 54(c) of the Act are inapplicable. In State of Punjab v. Bhatinda District Cooperative Milk Producers Union Ltd.*[19]*, the Supreme Court held that in*

cases where the period of limitation is not prescribed, the application must be made within a reasonable period. In case no time is provided for an Act, the same must be done in a reasonable period. What would be a reasonable period must be construed in the context of the provisions of the Act. Section 54(c) of the Act and Section 50 of the Act indicate that the legislative intent to confine the period for seeking allowance to not exceed six months after the cause of action has arisen. Thus, in cases where the applicant applies for refund of unused stamps/stamp certificate within a period of six months of becoming aware that he has no immediate use of the same, the claim for refund cannot be stated to be delayed and must be admitted. This is, obviously, subject to the applicant satisfying clauses (a) and (b) of Section 54 of the Act-the Stamps must have been purchased for full consideration with the bonafide purpose to use them.

***61.** In the present case, it was not contested that the petitioner had applied for a refund immediately after becoming aware that the NOC for purchasing the subject property was not forthcoming.*

***62.** The petitioner's claim can be looked at with another perspective. It is apparent that the petitioner had purchased the stamps under a mistaken belief that the NOC for the subject property would be forthcoming and had sought the refund immediately on being aware of the said mistake. As noted above, there is no dispute that the taxing event has not occurred, thus, the petitioner had no liability to pay the stamp duty which has been paid by it. Plainly, no such amount could be recovered if the petitioner had not purchased the stamp certificate. The instrument chargeable to tax was never executed and thus, the stamp duty collected was not chargeable. As stated above, the refund of such tax is not covered under the Act. It is well settled that the person paying tax, which is not payable, under a* *mistake is entitled to the refund of such tax if the same is not proscribed by the statue, either expressly or by necessary implication. The limitation as provided under the relevant Act may not strictly apply, if the refund is not covered under the enactment.*

63. *In Commissioner of Sales Tax. U.P v. Auriaya Chamber of Commerce, Allahabad*[20]*, the Supreme Court had upheld the decision for refund of sales tax paid under a law, which was declared as invalid. The taxpayer's claim for refund was held to be within the period of limitation notwithstanding, that the refund applications were not made within two years, of payment of such tax. The Supreme Court reckoned the period from the date on which the law was declared as invalid. The Supreme Court also observed as under:*

> *"**31.** Where indubitably there is in the dealer legal title to get the money refunded and where the dealer is not guilty of any laches and where there is no specific prohibition against refund, one should not get entangled in the cobweb of procedures but do substantial justice. The above requirements in this case, in our opinion, have been satisfied and therefore we affirm the direction of the Additional Judge (Revisions), Sales Tax for refund of the amount to the dealer and affirm the High Court's judgment on this basis."*

64. *In Shri Vallabh Glass Works Ltd. v. Union of India*[21]*, the Supreme Court had modified the orders passed by the High Court and also granted refund of tax for a period of three years prior to filing of the petition challenging the validity of levy, on the basis of the limitation for a suit provided under the Limitation Act, 1963. The Supreme Court noted that if a suit had been filed by the appellants, the period of limitation would begin from the date when the appellants had*

> *discovered the mistake under which excess duty was paid.*

5. In view of the above, the Order dated 11.09.2023 rejecting the application of the Petitioner is set aside even though the said Order has not been challenged in the instant writ petition. The Respondents are directed to re-consider the entire issue in light of the aforesaid Judgment within a period of eight weeks from today.

6. The writ petitions are disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

FEBRUARY 19, 2024
S. Zakir