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

\+   LPA 691/2023 and CM APPL. 52376/2023

HARISH TEA TRADERS PVT LTD ..... Appellant

Through: Mr. Manoj Kumar Garg and Mr. Pulkit Atal, Advocates.

versus

NCT OF DELHI & ANR. ..... Respondents

Through: Mr. Anupam Srivastava, ASC for GNCTD with Mr. Vasuh Misra, Advocate for GNCTD
Mr. Satyakam, ASC.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

O R D E R

% **07.02.2024**

1. Present appeal has been filed challenging the order dated 31st August, 2023 passed by a learned Single Judge of this Court in W.P. (C) No. 14733/2021, whereby, the Appellant's petition seeking refund of E-Stamp duty of ₹ 4,80,000/- along with interest has been dismissed.

2. Learned counsel for the Appellant states that the learned Single Judge while dismissing the underlying petition erred in holding that the case of the Appellant was covered under Section 54 of the Indian Stamp Act, 1899 as the stamp paper purchased by the Appellant was not put to use at all and was lying with the appellant without any immediate use. He states that the learned Single Judge erroneously accepted the contention of the Respondent

No.2, Collector of Stamp, that the application filed by the Appellant for refund of the stamp duty could not be allowed as it had been filed beyond the time period prescribed under Section 54 of the Act i.e. six months from the date of purchase of the stamp paper. He further states that the owners of the land failed to obtain NOC from the concerned authorities even after extension of time and thus the agreement to sell could not be executed.

3. He submits that a Co-ordinate Division Bench of this Court in ***Citius Real Estate (P) Ltd.*** *vs.* ***Union of India and Another***, ***2023 SCC OnLine Del 7514***, while upholding the legality and validity of Section 54 (c) of the Stamp Act, 1899 has held 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 & Ors. 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.*
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> *xxxx xxxx xxxx*
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> *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."

4. In view of the aforesaid Division Bench judgment, the impugned judgment and order is set aside and the matter is remanded back to the Collectors of Stamps for a fresh decision within six weeks in accordance with law.

5. With the aforesaid directions, the present writ petition and pending application stand disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 7, 2024/*rhc*