Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.17 OF 2025

Pranjape Authocast Pvt. Ltrd. Through
Its Authorized Signatory
Shankar K. Birje … Petitioner

V/s.

Collector of Stamp & Ors. … Respondents

Mr. Chaitanya B. Nikte a/w Mr. Deepak Deshpande, Mr. Prajit S. Sahane, Mr. Ritvij A. Kale for petitioner.

Ms. Kavita N. Solunke, AGP for State – respondent.

CORAM : AMIT BORKAR, J.

DATED : APRIL 15, 2025

P.C.:

1. **Rule.** Rule is made returnable forthwith.

2. By this petition invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India, the petitioner has assailed the legality, propriety and correctness of the order dated 28 August 2024 passed by respondent No.2 – the Chief Controlling Revenue Authority, Maharashtra State, whereby the petitioner's statutory appeal came to be partly allowed. By the said impugned order, respondent No.2 modified the earlier adjudication dated 28 January 2013 passed by the Collector of Stamps, Enforcement–1, Mumbai in Case No. ADJ/175/2011, and directed the petitioner to deposit an amount of ₹26,45,435/- towards deficit stamp duty within a period of ten days from the date of receipt of the order.

3. The facts germane to the adjudication of the present petition may be briefly delineated as under:

4. The petitioner, a company incorporated under the provisions of the Companies Act, 1956, had filed a scheme of amalgamation under Section 394 of the said Act before this Hon'ble Court. The scheme envisaged amalgamation of a transferor company into the petitioner company. By judgment and order dated 25 March 2011, this Court sanctioned the said scheme of amalgamation. Thereafter, on 15 April 2011, the petitioner lodged a certified copy of the order of amalgamation before the Collector of Stamps (respondent No.1) for the purposes of adjudication of stamp duty under the Maharashtra Stamp Act, 1958 ("the said Act" for short). Upon processing the said submission, respondent No.1 passed an order dated 28 January 2013 assessing the stamp duty payable, as per demand notice dated 18 April 2012.

5. Being aggrieved by the assessment so made, the petitioner preferred an appeal under Section 53(1A) of the said Act before respondent No.2. The said appeal came to be partly allowed by respondent No.2 by order dated 29 August 2018, whereby the assessment was modified. The petitioner, being dissatisfied with the said decision, approached this Court by filing Writ Petition No.13281 of 2018. This Court, by its judgment, partly allowed the writ petition and remanded the matter to respondent No.2 for fresh adjudication limited to the issue of determining the quantum of market value of the immovable property forming part of the sanctioned scheme of amalgamation.

6. Pursuant to the remand, respondent No.2 passed the impugned order dated 28 August 2024, whereby the appeal came to be partly allowed. By the said order, it was held that the plant and machinery involved in the amalgamation do not partake the character of "immovable property" and hence no stamp duty is leviable thereon. However, respondent No.2 invoked the provisions of Section 5 of the said Act and levied stamp duty at the rate of 3% under Article 25(a) of Schedule I of the Maharashtra Stamp Act on the market value of immovable properties included in the scheme of amalgamation. Being aggrieved by such levy, the petitioner has instituted the present writ petition.

7. Learned counsel appearing for the petitioner has submitted that the impugned order suffers from patent legal infirmity inasmuch as the Chief Controlling Revenue Authority has erroneously bifurcated the scheme of amalgamation into two distinct transactions—one relating to transfer of immovable property and another pertaining to movable assets such as plant and machinery. It is submitted that such bifurcation is misconceived, as the scheme of amalgamation sanctioned by the Court under Section 394 of the Companies Act constitutes a singular statutory transaction effectuating a transfer of the entire undertaking as a going concern. It was pointed out that the impugned order is contrary to the stand adopted by the respondents themselves in their affidavit-in-reply, wherein it is contended that the machinery installed is embedded into the earth and therefore assumes the character of immovable property, liable for stamp duty.

8. Learned counsel for the petitioner further placed reliance on the judgment of a Division Bench of this Court in *Li Taka Pharmaceuticals Ltd. and Another vs. The State of Maharashtra and Others*, reported in **(1996) 2 Mah LJ 156**, wherein the Court has held that in the context of amalgamation schemes, the transfer of assets and liabilities of the transferor company takes place as a statutory vesting under the order of the Court and that the components of shares and liabilities are to be assessed separately for the purpose of stamp duty. It was thus urged that the stamp authorities were not justified in treating the amalgamation as comprising two independent conveyances warranting separate levy.

9. Per contra, learned Assistant Government Pleader appearing for the respondents submitted that the impugned order does not call for any interference in writ jurisdiction. It was contended that respondent No.2 has rightly invoked Section 5 of the said Act, which deals with instruments comprising or relating to several distinct matters, and has accordingly levied stamp duty separately on the market value of the immovable property transferred. It was urged that the machinery in question, being affixed to the land and forming an integral part of the industrial undertaking, was rightly assessed as immovable property. The findings recorded in the impugned order, it was submitted, are based on cogent material and the settled principles of classification of property for stamp duty purposes.

10. Rival contentions urged on behalf of the parties now fall for consideration of this Court.

11. Upon a close perusal of the impugned order dated 28 August 2024 passed by respondent No.2 – the Chief Controlling Revenue Authority, it becomes evident that this Court, by its earlier order dated 14 September 2023, had remitted the matter to the said Authority for a limited adjudication on the issue of determining the market value of the plant and machinery forming part of the assets transferred under the scheme of amalgamation sanctioned under Section 394 of the Companies Act, 1956.

12. At this juncture, it is apposite to refer to the statutory provision which governs the levy of stamp duty on instruments involving multiple transactions. Section 5 of the Maharashtra Stamp Act, 1958, which deals with instruments relating to several distinct matters, reads thus:

> "5. Instruments relating to several distinct matters or transactions.—Any instrument comprising or relating to several distinct matters or transactions shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters or transactions, would be chargeable under this Act."

13. A plain and purposeful reading of Section 5 makes it manifest that where an instrument embodies distinct and severable matters or transactions, each of such transactions is liable to be charged with stamp duty independently, and the aggregate of the duties so computed shall be payable. Thus, where the instrument encompasses distinct components such as transfer of immovable property and movable assets, the duty is required to be calculated by segregating the value of each such transaction, provided such separation is not artificial or arbitrary.

14. Further, reference is also required to be made to Article 25(da) of the Schedule I appended to the Maharashtra Stamp Act, 1958, which specifically governs the levy of stamp duty in cases of amalgamation sanctioned by the High Court under Section 394 of the Companies Act, 1956 or similar provisions of the Companies Act, 2013 and the Banking Regulation Act, 1949. Article 25(da) prescribes that the duty shall be leviable at a rate of 0.7% on the aggregate of the market value of shares issued or allotted and the amount of consideration paid in connection with the amalgamation.

15. The proviso appended to Article 25(da) further clarifies that the stamp duty so chargeable shall not exceed the higher of the following two limits: (i) 5% of the true market value of the immovable property of the transferor company situated within the State of Maharashtra; or (ii) 0.7% of the aggregate of the market value of shares issued or allotted, and the consideration paid for such amalgamation.

16. From the record, and more particularly paragraph 8 of the reply filed by respondent Nos.1 and 2, it is seen that the stamp duty computed under clause (ii) of Article 25(da)—i.e., 0.7% of the market value of shares issued—comes to ₹23,45,175/-, whereas the market value of immovable property, as determined, is

₹83,87,725/-. In view of the proviso to Article 25(da), the higher of the two must be considered for the purpose of levying stamp duty. Accordingly, the maximum chargeable stamp duty would be on the market value of the immovable property, which is higher than the notional 0.7% computation based on share value.

17. It is further noted that while passing the impugned order, respondent No.2 proceeded to bifurcate the components of amalgamation and levied separate duties on movable and immovable properties without appreciating that the proviso to Article 25(da) overrides such bifurcation. On perusal of the impugned order, the reply filed by respondent Nos.1 and 2, and the earlier adjudication under Section 31 of the Maharashtra Stamp Act, it is evident that the market value of shares has been taken at ₹33,50,25,000/- and the value of immovable property is determined as ₹6,19,52,500/-. Hence, in terms of the proviso, the duty is required to be calculated on the higher of the two, which in the present case is the value of immovable property.

18. It is also brought on record by way of documentary evidence that the petitioner has already paid an amount of ₹33,00,000/- towards stamp duty vide challan dated 22 July 2016. Thus, the primary basis for computation, in law, has to be the market value of immovable property at ₹6,19,52,500/- and not a combined or bifurcated duty on separate components of movable and immovable assets.

19. The impugned order, therefore, suffers from misapplication of the statutory framework and a failure to adhere to the computation mechanism prescribed under Article 25(da), read with its proviso. The levy of stamp duty must necessarily be recalibrated in accordance with the said provision, treating the higher value of ₹6,19,52,500/- as the relevant basis.

20. In view of the foregoing discussion, and finding merit in the challenge raised by the petitioner, the impugned order passed by respondent No.2 is hereby quashed and set aside. Rule is made absolute in terms of prayer clause (a).

21. It is further directed that, upon re-adjudication, if it is found that the stamp duty already paid by the petitioner exceeds the duty actually chargeable in terms of Article 25(da) and the proviso thereto, the excess amount shall be refunded to the petitioner within a period of four weeks from the date of the final determination. Such re-adjudication shall be completed with in six weeks. In the alternative, if any shortfall is found, the same may be recovered from the petitioner in accordance with law, after due opportunity of hearing. With the aforesaid directions, the writ petition stands disposed of. There shall be no order as to costs.

(AMIT BORKAR, J.)