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WP(MD)No.25436 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.11.2025

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.25436 of 2025

M/s.Dugar, A Partnership Firm,
Rep.by its Authorised Representative
Mr.P.K.Rajendhran S/o.Kuppuswamy
having its place of business at No.25,
SR Lakshmanan Nagar,
Singanallur, Coimbatore – 641 005.

... Petitioner

Vs.

1. The Inspector General of Registration,
Santhome, High Road, Chennai – 600 028.

2. The Sub Registrar,
Kodaikanal – 624 101.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the second respondent to refund a sum of Rs.11,10,000/- collected by them towards surcharge for registration of sale certificate dated 20.08.2023 issued in favour of the petitioner and for consequential orders and thereby render justice.

For Petitioner : Mr.Sharath Chandran

For Respondents : Mr.Ajmal Khan,
Additional Advocate General
assisted by Mr.S.Shanmugavel,
Additional Government Pleader

**ORDER**

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The petitioner is a partnership firm. It purchased the petition-mentioned properties in an auction conducted by the official liquidator/High Court of Madras in C.P No.17 of 2004. The properties belonged to M/s.SIV Industries Limited which was ordered to be wound up on 28.04.2004. The properties were brought to public auction on 04.09.2023. The petitioner was the successful bidder. After remittance of the entire sale consideration, sale certificate was issued by the official-liquidator to the petitioner on 10.11.2023.

2.The petitioner presented the sale certificate before the registering officer (R2 herein) for registration. The registering officer demanded payment under the following heads :

"5% stamp duty, 2% registration charges and 2% surcharge"

The petitioner protested that while they are liable to pay stamp duty and registration fees, demand of 2% surcharge is not legal. Since the registering officer insisted on payment of surcharge also, the petitioner paid the same under protest. The sale certificate was registered as Doc No.2238 of 2025. This writ petition has been filed seeking refund of the surcharge amount paid by them.



3.The learned counsel appearing for the writ petitioner submitted that the issue raised in this writ petition is no longer res integra. He relied on the decisions reported in **(1991) 1 SCC 633 (Municipal Corporation of Delhi vs Pramod Kumar Gupta), 2022 SCC OnLine Mad 8784 (Inspector General of Registration vs Trinity Colour India (P) Ltd made in W.A No. 1606 of 2021 vide order dated 01.08.2024)** and **2024 SCC OnLine Mad 8784 (Sri Balaji Fibre vs Inspector General of Registration).**

4.The respondents have filed a detailed counter affidavit. The learned Additional Advocate General took me through its contents. The stand of the respondents is that collection of surcharge amount was as per Section 3 of Tamil Nadu Duty on Transfers of Property (in Municipal Areas) Act, 2009 (Act 32 of 2009). According to him, if the sale certificate had merely been filed in Book No.1 under Section 89(1) of the Act, then, even the stamp duty was not required to be paid. But if the auction purchaser wanted to register the sale certificate, then, he has to necessarily pay not only the required stamp duty and registration fees but also the surcharge duty. When the auction purchaser presents the sale certificate, it acquires the character of conveyance as per the Articles 18 and 23 of the Indian Stamp Act, 1899. He pointed out that



this issue has been authoritatively settled by the Hon'ble Division Bench of the Madras High Court in ***The Inspector General of Registration vs M/s Sulochana Cotton Spinning (P) Ltd (W.A.No. 1115 of 2017 vide order dated 03.04.2024)***. He also added that the decision of the Hon'ble Division Bench rendered in ***Inspector General of Registration vs Trinity Colour India (P) Ltd made in W.A No. 1606 of 2021 vide order dated 01.08.2024*** which favours the petitioner's stand had already been put to challenge before the Hon'ble Supreme Court and notice has been ordered in ***SLP (Civil) Diary No. 53340/2024*** on 01.08.2024. The learned Additional Advocate General was at pains to point out that when the Hon'ble Supreme Court is seized of the matter, it may not be appropriate for this Court to delve into the merits of the controversy. He called upon this Court to dismiss this writ petition.

5.I carefully considered the rival contentions and went through the materials on record.

6.The only question that calls for consideration is whether surcharge is leviable on a sale certificate under Tamil Nadu Act 32 of 2009 when it is presented for registration. Section 3 of Tamil Nadu Act 32 of 2009 is the charging section and it reads as follows :



“3. There shall be levied a duty on transfers of property in every municipal area,— (a) in the form of a surcharge on the duty imposed by the Indian Stamp Act, 1899 (hereinafter referred to as the Stamp Act) as in force for the time being in the State of Tamil Nadu, on every instrument of the description specified below, which relates to immovable property situated within the limits of the municipal area; and (b) at such rate as may be fixed by the Government, not exceeding five per centum, on the amount specified below against such instrument:—“

This levy is not an innovation. There were corresponding Sections in the Chennai City Municipal Corporation Act, 1919, the Madurai City Municipal Corporation Act, 1971, the Coimbatore City Municipal Corporation Act, 1981 and the Tamil Nadu District Municipalities Act, 1920 and they were identically worded. All those provisions were repealed on and from the date of commencement of Tamil Nadu Act 32 of 2009.

7.A similar provision was found in The Delhi Municipal Corporation Act, 1957. When question arose as to whether surcharge can be levied on a sale certificate under Section 147 of the Delhi Municipal Corporation Act, 1957, the Hon'ble Supreme Court in the decision reported in **(1991) 1 SCC 633 (Municipal Corporation of Delhi v. Pramod Kumar Gupta)** held as follows :



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"4. The expression 'instrument' in Section 147 of the Act has the same connotation as the word has under the Stamp Act, the reference to which has been expressly made. Clause (14) of Section 2 of the Stamp Act gives an inclusive definition of the expression as referring to any document by which any right or liability is purported to be created, transferred, limited, extended, extinguished or recorded. Clause (10) of the said section states that 'conveyance' includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos. The expression 'instrument of sale of immovable property' under Section 147 of Act must, therefore, mean a document effecting transfer. The title to the property in question has to be conveyed under the document. The document has to be a vehicle for the transfer of the right, title and interest. A document merely stating as a fact that transfer has already taken place cannot be included within this expression. A paper which is recording a fact or is attempting to furnish evidence of an already concluded transaction under which title has already passed cannot be treated to be such an instrument."

It was thus held that the sale certificate cannot be termed to be an instrument of sale so as to attract Section 147 of the Delhi Municipal Corporation Act. When the very same issue arose before a learned Judge of this Court in ***Sri Balaji Fibre v. I.G of Registration***



(**2024 SCC OnLine Mad 3737**), it was held that surcharge is not leviable. In fact, the Hon'ble Judge (His Lordship Mr.Justice N.Sathish Kumar) was confronted with conflicting opinions. One Hon'ble Division Bench in ***The Inspector General of Registration vs M/s Sulochana Cotton Spinning (P) Ltd (W.A.No. 1115 of 2017 vide order dated 03.04.2024)*** had held that surcharge is leviable. Another Hon'ble Division Bench in ***Inspector General of Registration vs Trinity Colour India (P) Ltd made in W.A No. 1606 of 2021 vide order dated 01.08.2024*** had held otherwise. His Lordship Mr.Justice N.Sathish Kumar observed that the decision of the Hon'ble Supreme Court made in ***Pramod Kumar Gupta*** was not brought to the notice of the Hon'ble Division Bench which decided ***Sulochana Cotton Spinning (P) Ltd*** (WA No.1115 of 2017). I respectfully follow the ratio laid down in ***Sri Balaji Fibre*** because it took note of the conflicting views and proceeded to lay down the law in the light of what was held by the Hon'ble Supreme Court in ***Pramod Kumar Gupta***.

8.In fact, the decision rendered in ***Sri Balaji Fibre*** is in tune with the decisions rendered earlier (***Dr. Meera Thinakaran vs State of Tamil Nadu (2012-1-L.W.351)***, ***P. Pandian vs Inspector General of Registration (2016 2 LW 273)***, ***Polyhose India vs***



***Inspector General of Registration ((2017) 2 CTC 305) and
Sakthi Foundations Pvt Ltd vs Inspector General of
Registration (2021) 2 LW 657).***

9. Thus, the weight of judicial authority is overwhelmingly in favour of the writ petitioner. That apart, on first principles too, the case of the writ petitioner has to be upheld. The document with which this Court is concerned is a sale certificate. Article 18 of Schedule I of the Indian Stamp Act, 1899 deals with certificate of sale. Section 2(14) of the said Act defines an "instrument" as including documents mentioned in Schedule I. Since sale certificate is mentioned in Schedule I, it would definitely fall within the expression "instrument". But Section 3 of Tamil Nadu Act 32 of 2009 will apply only to those instruments of sale/exchange/gift/mortgage with possession/lease in perpetuity of immovable property. Thus, it is not enough if the document is merely an instrument within the meaning of Section 2(14) of the Indian Stamp Act but it should also fall within the description of instrument as set out in Section 3 of the Tamil Nadu Duty on Transfers of Property (in Municipal Areas) Act, 2009.



10. Tamil Nadu Act 32 of 2009 is a fiscal statute. It is the plain language of the provision of the taxing statute that has to be preferred where language is plain and is capable of determining defined meaning. Strict interpretation to the provision is to be accorded. Purposive interpretation cannot be given when ambiguity is not found in the statutory provision (vide **(2022) 6 SCC 459 State of Gujarat v. Arcelor Mittal Nippon Steel (India) Ltd**). A taxing statute must be read as it is, with no additions and no deletions. There can be no taxation by implication. There can be no taxation by implication. In **Nanak Chand v. Fattu**, reported in **A.I.R. 1935 Lahore 567** it was **held as follows :**

“If therefore a document is so worded that it expressly, or by necessary implication comes within a particular provision of the Act, it must be stamped accordingly. But the implication must arise from the phraseology used in the document, and not be a matter of legal inference or presumption. An implication of law does not involve liability to duty, though it may give rise to certain legal obligation.”

Therefore, Section 3 of Tamil Nadu Act 32 of 2009 has to be strictly construed and not expansively. A sale certificate while being an instrument within the meaning of Section 2(14) of the Stamp Act will not qualify to be an instrument of sale.



11.A sale certificate is a record of what transpire at a concluded auction. Sale certificate is not the instrument under which the sale takes place. A sale certificate is a mere evidence of title. A sale certificate is not a deed of conveyance. That is explicitly acknowledged by the statute itself. Section 2(10) of the Indian Stamp Act defines “conveyance” as including a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I. If according to the law makers, sale certificate is also a deed of conveyance, there is no need to provide one article (Article 18) for certificate of sale and another article (Article 23) for conveyance. There is a biblical saying that what God has joined, let no one separate. The theological imprimatur on marriage is that there is union of souls which cannot be torn asunder. The converse in the present context would be what are legislatively separate creatures cannot be fused into one by judicial fiat. When the statute itself treats a deed of conveyance and a certificate of sale as two distinct categories, it is not for the court or the registering authority to treat them as one.

12.Article 18 of Schedule I of the Indian Stamp Act is to the effect that when sale certificate is presented, the proper stamp duty



leviable would be as on a conveyance for a market value equal to the amount of the purchase money only. As already mentioned, conveyance is dealt with in Article 23. Schedule I contains three columns. First column is "serial number", the second column is "description of instrument", the third column is "proper stamp duty". Schedule I can be invoked only for the purpose of levying stamp duty and nothing else. Surcharge would fall under a different head altogether. Levy of surcharge can be justified only in terms of Section 3 of Tamil Nadu Act 32 of 2009. Once it is concluded that a sale certificate is not an instrument of sale of immovable property, the demand for or levy or collection of surcharge becomes illegal.

13. In all stamp duty related statutes, what is taxed is not the transaction but the instrument (vide ***Minister of Stamps v. Annie Quayle Townend (1909 Appeal Cases 633)*** and ***Bharpet Mohammad Hussain Saheb v. District Registrar, Kurnol (AIR 1964 AP 43)***). The revenue cannot go beyond the instrument being presented for registration to the nature of transaction to decide the levy of duties. This principle can be further extended. Merely because a sale certificate on being presented for registration is taxed as a deed of conveyance, that would not by itself alter the character of the



instrument. If the sale certificate is directly despatched by the court or the authorised officer to the registering officer, it would be filed in Book I and the question of paying stamp duty does not arise. Stamp duty becomes payable only when it is presented for registration by the party. Thus the sale certificate remains what it is. The mode of presentation before the registration determines whether stamp duty is leviable. Surcharge can be levied only on the instrument. If sale certificate is not a deed of conveyance, then, surcharge cannot be levied. The fact that stamp duty is levied on account of presentation of the sale certificate for registration cannot make any difference.

14. Levy of surcharge is linked to transfer of property. That is what Section 3 of Tamil Nadu Act 32 of 2009 says. Even the preamble of the statute reads that it is An Act to provide for the levy and collection of duty on transfers of property. Though Section 3 of Tamil Nadu Act 32 of 2009 levies surcharge on the duty imposed by the Stamp Act, it has to be only on the instruments of the description specified in the table set out in the Section itself. In the present context, unless the instrument is one of sale of immovable property, surcharge cannot be levied. Since the judicial precedents mentioned above have held time and again that a sale certificate is not an instrument of sale, surcharge cannot be levied.



15. In Section 3, the rate of duty as may be fixed by the government is on the market value of the property as set forth in the instrument, subject to Section 47A of the Stamp Act. As per Article 18, stamp duty is levied only on the purchase money set out in sale certificate. It is not on the market value of the property. Section 47A has no application whatsoever. If Article 18 is carefully read, it only means that the rate of stamp duty on the amount of purchase money in the sale certificate has to be on par with the rate of stamp duty levied on the market value of the property that is subject matter of conveyance. The application of Article 18 to a sale certificate does not metamorphose it into a deed of conveyance. In Section 3 of the Tamil Nadu Act 32 of 2009, there is no reference whatsoever to purchase money. Section 3 should therefore be confined only to the instruments of transfer described in the Section. Since sale certificate is not mentioned in Section 3, it cannot be subject to levy of surcharge.

16. Merely because the petitioner has paid the surcharge amount, the respondents cannot retain it. That would amount to unjust enrichment. Article 265 of the Constitution of India states that no tax shall be levied or collected except by authority of law. The said



Article had been interpreted in a number of decisions. In ***Faridabad Complex Admn. v. Hindustan Milkfood Manufacturers Ltd., (1991 Supp (2) SCC 262)*** and ***Belapur Sugar & Allied Industries Ltd. v. CCE, (1999) 4 SCC 103,*** it was held that an illegally collected tax has to be refunded. The same principle will apply to the case on hand also. The petitioner had been forced to cough up the amount of surcharge without any statutory justification. The respondents are obliged to refund the said amount within a period of eight weeks from the date of receipt of copy of this order.

17.I place on record my appreciation of the fine assistance voluntarily rendered by Ms.Ananya Pattabhiraman, the learned counsel who was incidentally present when the hearing took place. Such contribution from a young member of the Bar is particularly gratifying.

18.This writ petition is allowed. No costs.

19.11.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To:

1. The Inspector General of Registration,
Santhome, High Road,
Chennai – 600 028.
2. The Sub Registrar,
Kodaikanal – 624 101.



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G.R.SWAMINATHAN,J.

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