(2011) 02 MAD CK 0259

In the Madras High Court

Case No : W.A. No. 1970 of 2009 and M.P. No. 1 of 2009

Areva T and D Lightning Arresters Pvt. Ltd., [formerly known as ALSTOM T and D Lightning Arresters Pvt. Ltd.]	APPELLANT
Vs	
The Additional Secretary Department of Revenue and Disaster Management Government of Puducherry	RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:

Companies Act, 1956 — Section 64
Constitution of India, 1950 — Article 226
Pondicherry (Extension of Laws) Act, 1968 — Section 5, 6
Stamp Act, 1899 — Article 23, 33, 35, 38, 40

Citation : (2011) 02 MAD CK 0259

Hon'ble Judges : M.M. Sundresh, J;C. Nagappan, J

Bench : Division Bench

Advocate : T.R. Senthilkumar, for the Appellant; R. Syed Musthafa, Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Sundresh, J.—This Writ Appeal has been preferred against the order of the learned single judge whereby the Writ Petition filed by the Appellant was dismissed confirming the order dated 04.12.2006, by which the request made by the Appellant for the refund of stamp duty was rejected.

2. Facts in brief, are, as follows:

i) The Appellant is a Limited company. The Appellant has been involved in the business of designing, developing, manufacturing, buying and selling of lightning arresters, zinc oxide varistors and their components thereof. M/s. S & S Hitech Security Systems Limited was a subsidiary company of M/s. SSB Industries Limited. M/s. SSB Industries Limited was the holding and parent company. The parent company, M/s. SSB Industries Limited transferred all its assets inclusive of land, building and machineries in favour of its subsidiary company M/s. S & S

Hitech Security Systems Limited by way of a registered Sale Deed dated 22.11.2000. The document was registered in Document No. 2310/2000 in the office of the Sub-Registrar, Villianur, Pondicherry. The sale consideration was fixed at Rs. 4,70,33,000/-. Accordingly a total stamp duty of Rs. 44,80,000/- was paid as per Article 23 [Conveyance] of Schedule I u/s 3 of the Indian Stamp Act, 1899.

ii) Thereafter, the Appellant made a representation on 15.05.2001 to the Joint Secretary of Revenue, Government of Pondicherry, requesting the refund of a sum of Rs. 44,80,000/- said to have been paid as excess stamp duty by oversight. The said request was made basing reliance upon the Notification issued by the Government of India in Notification No. 12 dated 25.12.1937, prior to the independence. The said representation was followed by subsequent representations dated 27.10.2003 and 25.11.2003. A reply was sent by the Respondent dated 09.07.2004 to the Appellant stating that certain particulars need be furnished by the Appellant to process the representation further. The Appellant, in and by the letter dated 14.07.2004, provided the particulars sought for. A letter was also addressed by the Respondent to the Registrar of Companies dated 13.10.2004 to grant certificate to the effect that the conditions mentioned in the Government of India Notification No. 1 dated 16.01.1937 has been fulfilled. The Appellant made a further representation on 08.11.2004. A communication was also sent by the Assistant Registrar of Companies to the Respondent on 25.02.2005 referring the particulars of the shares held by M/s. SSB Industries Limited.

iii) The Appellant filed a writ petition in W.P. No. 8573/2006 seeking a direction to the Respondent to dispose of the representations made. In pursuance to the said order passed by this Hon''ble Court dated 12.04.2006, the order impugned dated 04.12.2006 has been passed by the Respondent stating that inasmuch as the Sale Deed falls under Article 23 [Conveyance] of Schedule I u/s 3 of the Indian Stamp Act, 1899, the question of excess stamp duty and the consequent request for remission does not arise for consideration. Challenging the said order, the Appellant filed the Writ Petition.

iv) The learned single judge was pleased to dismiss the Writ Petition on the ground that Notification No. 12 dated 25.12.1937 does not have any application to the case of the Appellant. When the Respondent was under the French rule up to 1954, it cannot be said that the Notification issued in the year 1937 will have to be applied. It was further observed that the Notification was issued pursuant to the then Companies Act, 1913 and the said Act was repealed. Therefore, the contention regarding the applicability of Notification No. 12 dated 25.12.1937 was rejected.

v) The learned single judge has also rejected the contention of the Appellant made based upon Section 6 of the Pondicherry (Extension of Laws) Act, 1968 and held that the said provision will not be applicable in the absence of any Notification passed by the Respondent. It is further held by the learned single judge that Section 5 of the said Act is pertaining to the Act passed by the Central Government and has no relevancy to the Notification issued by the State of Tamil Nadu. A further finding was given regarding the applicability of the application made u/s 45 of the Indian Stamp Act, 1899. Hence considering the above said findings, the learned single judge has declined to exercise the extraordinary jurisdiction under Article 226 of the Constitution of India and accordingly dismissed the Writ Petition. Challenging the same the present appeal has been filed.

3. Mr. T.R. Senthilkumar, learned Counsel appearing for the Appellant contended that the benefits given under the Notification No. 12 dated 25.12.1937 will have to be extended to the Appellant as well. Section 5 of the Pondicherry (Extension of Laws) Act, 1968 read with Section 6(1) of the said Act would entitle the Appellant to get the benefits of the Notification passed by the State of Tamil Nadu. The Respondent has got the power u/s 45 of the Indian Stamp Act, 1899 to order the refund of penalty or excess stamp duty paid. Considering the object of the Notification issued in Notification No. 12 dated 25.12.1937, the same will have to be extended to the case of the Appellant. It was also submitted that, when there are two interpretations possible, the one which is beneficial to the Assessee, will have to be adopted. In support of the said contention, the learned Counsel has made reliance on the judgment of the learned single judge of this Court in S.M.S.A.A. Farooq Ali v. The Sub-Registrar, North Madras, Madras-1 and Ors. reported in 2005(4) CTC 515. Accordingly, the learned Counsel submitted that the appeal will have to be allowed.

4. Per contra, the learned Additional Government Pleader appearing for the Respondent submitted that the writ appeal and the writ petition are totally misconceived. There is absolutely no power or authority available to the Respondent u/s 45 of the Indian Stamp Act, 1899. What is involved in the present case is a request for refund, which cannot be considered u/s 45, unless the same is in pursuant to the payment made u/s 35 or Section 40 of the said Act. The Notification issued by the Central Government in Notification No. 12 dated 25.12.1937 does not have any application to the Respondent. The said Notification was issued during the British Rule. At that relevant point of time, the Union Territory of Pondicherry was under the control of the French Colony. Only after the passing of the Pondicherry Administration Act, 1962, the erstwhile French Colony came to be administered by the Government of India. The Respondent has introduced Pondicherry Stamp Duty (Amendment) Act, 1964, under which Article 15 A provides for the power of remission as exercised by the State of Tamil Nadu which is relied upon by the Appellant. After the passing of the Pondicherry (Extension of Laws) Act, 1968, what is applicable to the Respondent is the power available u/s 9(1)(a) of the Indian Stamp Act, 1899. The Appellant cannot have any legal right. The provision contained in Section 5 of the Pondicherry (Extension of Laws) Act, 1968 does not have any application to the present case on hand. The provision contained u/s 6(1) refers to the applicability of the Pondicherry (Extension of Laws) Act, 1968. Section 6(1) of

the Pondicherry (Extension of Laws) Act, 1968 clearly stipulates that only in a case where a Notification is extended to Pondicherry, then the reference can be to Pondicherry and the corresponding laws in Pondicherry. The learned single judge has rightly declined to exercise the discretionary relief. Therefore, it is submitted that the appeal is totally misconceived and liable to be dismissed.

5. We have considered the rival submissions.

6. In the present case on hand, the Appellant has paid the stamp duty as required under Article 23 of Schedule I of Section 3 of the Indian Stamp Act, 1899 voluntarily. Thereafter a representation has been given basing reliance upon the Notification No. 12 dated 25.12.1937. The request was made by the Appellant to exercise the power u/s 45 of the Indian Stamp Act, 1899 based upon the said Notification.

7. Admittedly, the Notification No. 12 dated 25.12.1937 was made during the British Rule. The Union Territory of Pondicherry was under the French Rule up to 1954. Till that time it was only a French Colony. In the year 1954, there was a de-facto agreement to merge the French Colony with the Republic of India and the actual merger took place on 16.08.1962. During the period between 1954 to 1962, the foreign jurisdiction Act was made applicable to Pondicherry. Only after passing of the Pondicherry Administration Act, which came into force on 16.08.1962, the erstwhile French Colony came to be administered by the Government of India.

8. An amendment was made by way of Pondicherry Stamp Duty (Amendment) Act, 1964, amending Article 15 by way of deducing Article 15 A. The said amendment is in pari materia to Section 9(1)(a) of the Indian Stamp Act, 1899, which provides for the introduction of Rule or passing of an order for the purpose of reduction or remitting the stamp duty. It is further to be seen that Notification No. 12 dated 25.12.1937 as well as the Notification issued by the State of Tamil Nadu, have been issued in exercise of power u/s 9(1)(a) of the Indian Stamp Act, 1899. Therefore, from the year 1964 onwards the said power is independently available to the Respondent. After the introduction of the Pondicherry (Extension of Laws) Act, 1968, the power available u/s 15 A of earlier Pondicherry Stamp Duty (Amendment) Act, 1964, was replaced by the power available u/s 9(1)(a) of the Indian Stamp Act, 1899. Hence, we are of the considered view that until and unless such a power is exercised by the Respondent u/s 9(1)(a) of the Indian Stamp Act, 1899, the Appellant cannot claim the benefit sought for.

9. It is also to be seen that the Notification No. 12 dated 25.12.1937 was made applicable to the companies which were in existence under the Companies Act, 1913. The said Companies Act, 1913 was repealed by virtue of Section 64 of the Indian Companies Act, 1956 read with Schedule II thereof. Therefore, the Appellant cannot make any reliance upon the Notification No. 12 dated 25.12.1937.

10. The reliance made by the learned Counsel for the Appellant on Section 5 of the Pondicherry (Extension of Laws) Act, 1968 also cannot be countenanced. Section 5 of the said Act specifically provides for the applicability of the Act and the consequential rules, notifications, orders, regulations etc. made or issued by the Central Government to the Union Territory of Pondicherry. Section 6(1) provides for rules of construction. As contended by the learned Additional Government Pleader, Section 6(1) is applicable only in a case where a notification ordered or regulation etc. is extended to Pondicherry and only in such an eventuality, a reference can be made to the Union Territory of Pondicherry and the corresponding laws. Therefore, in the absence of any notification issued by the Respondent extending the said benefit, the contention of the learned Counsel for the Appellant cannot be countenanced.

11. We have also perused the relevant provisions of the Indian Stamp Act, 1899, particularly with reference to Section 45, which provides power to the Revenue authority to refund penalty or excess duty. Section 45 of the Act prescribes that in a case where the authority is of the view that a stamp duty in excess, which is legally chargeable has been charged and paid u/s 35 or Section 40, then refund can be ordered for the excess amount paid on an application made within the time limit prescribed. Chapter IV of the Indian Stamp Act, 1899 deals with instruments not duly stamped. Section 33 of the Act provides for examination and impounding of instrument. Section 35 of the Act deals with instruments not duly stamped rendering themselves as inadmissible in evidence before a court of law. Similarly, Section 40 of the Act deals with the power of the Collector to stamp the instruments impounded. The said section also deals with the power of the Collector to deal with a document impounded u/s 33 or received by him u/s 38 of the Indian Stamp Act, 1899. Section 38 of the Act provides for a procedure for dealing with the document impounded.

12. Therefore, the said provisions would make it clear that until and unless the procedure is followed on the ground that the document has not been duly stamped and thereafter stamp duty was paid in excess, which, in the opinion of the Chief Controlling Revenue Authority, requires to be refunded, the power u/s 45 can be invoked. Admittedly, in the present case on hand, there was no impounding of the document. The procedure contemplated under Chapter IV has not come into play, as it is not required. Therefore, the Respondent does not have the power or authority to exercise the power u/s 45 of the Indian Stamp Act, 1899 on the representation made by the Appellant. When the Respondent does not have the power to even pass an order, then this Court by the exercise of the power under Article 226 of the Constitution of India cannot confer the said jurisdiction, which is otherwise not available.

13. It is also contended by the learned Counsel appearing for the Appellant that the object of the Notification No. 12 dated 25.12.1937 will have to be taken into consideration. It was further submitted that the Taxing Statutes should be interpreted in such manner that, if two views are possible, then the view in

favour of the Appellant/Assessee will have to be followed. In our considered view, the said contentions of the learned Counsel appearing for the Appellant do not merit acceptance. When the Appellant is not entitled to get any relief based upon any provision of law, then this Court cannot exercise the power of judicial duty and grant any relief. It is settled principle of law that a literal and unambiguous interpretation of Taxing Statute will have to be made. There cannot be any interpretation based upon equity while interpreting a Taxing Statute. Therefore, considering the reasons given above, we do not find any ambiguity in the provisions.

14. Hence, on a consideration of the facts and circumstances of the case discussed above, we do not find any reason to interfere with the order of the learned single judge and the Writ Appeal fails.

15. In the result, the Writ Appeal is dismissed. However, there shall be no order as to cost. Consequently, connected miscellaneous petition is closed.