(2009) 05 MAD CK 0010

In the Madras High Court

Case No : Writ Petition No. 3175 of 2007

AREVA T and D Lightning Arresters Pvt. Ltd. (Formerly known as ALSTOM T and D Lightning Arresters Pvt. Ltd.)	APPELLANT
Vs	
The Additional Secretary Departmental of Revenue and Disaster Management Government of Puducherry	RESPONDENT

Date of Decision : 05-05-2009

Acts Referred:

Companies Act, 1956 — Section 644
Constitution of India, 1950 — Article 226, 23, 239A
Pondicherry (Extension of Laws) Act, 1968 — Section 3, 3, 5, 5, 6
Stamp Act, 1899 — Section 19A, 2, 2(26), 3, 35

Citation : (2009) 3 CTC 34 : (2009) 5 MLJ 622

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : T.R. Senthil Kumar, for the Appellant; T. Murugesan, Sr. Govt. Pleader (Pondy), for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—Petitioner company seeks writ of Certiorarified Mandamus to quash the Proceedings of the Respondent in No.

9652/Rev-C3/2003 dated 04.12.2006 and direct the Respondent to refund the stamp duty of Rs. 44,80,000/- as per clause [ii] of the Central

Government notification No. 12 dated 25th December 1937.

2. Brief facts which led to the filing of Writ Petition are as follows:

(i) Petitioner is a limited company and its factory at RS-8/2, Sedarapet Main Road, Sedarapet Village, Pondicherry 605111 engaged in the

business of designing, developing, manufacturing, buying and selling of lightning arresters, zinc oxide varistors and components thereof.

(ii) S & S Hitech Security Systems Limited was a subsidiary company of SSB Industries Limited which was the Holding or Parent Company. The

said SSB Industries Limited, Parent Company transferred all its assets namely land, building and machineries to and in favour of its wholly owned

subsidiary company S & S Hitech Security Systems Limited and executed a sale deed dated 22.11.2000 registered as Document No. 2310 of

2000 in the Sub-Registrar of Villianur, Pondicherry. The sale consideration was Rs. 4,70,33,000/- and the total stamp duty of Rs. 44,80,000/-

was paid as prescribed under Article 23 [Conveyance] of Schedule I u/s 3 of the Indian Stamp Act.

3. Case of Petitioner is that Central Govt. issued Official notification No. 12 dated 25.12.1937 in exercise of the powers conferred u/s 9[a] of the

Indian Stamp Act. As per the said notification stamp duties chargeable on certain instruments and documentations applicable to the whole of India

and Union Territories are to be reduced. One such instrument for exemption/ reduction of stamp duty is where transfer had taken place between

Parent company and subsidiary company. The case of Petitioner is that the above notification will be squarely applicable to the Petitioner''s

transaction. However by oversight mistake subsidiary company S & S Hitech Security Systems Limited paid the stamp duty of Rs. 44,80,000/-.

Petitioner company had sent number of representations calling for refund of stamp duty of Rs. 44,80,000/- relying on the Central Govt. notification

N0.12 dated 25.12.1937. As there was no proper response, Petitioner company filed W.P. No. 8573 of 2006 seeking for writ of mandamus. The

said writ petition was disposed of on 12.04.2006 directing the Respondent to consider the representation of the Petitioner and pass orders in

accordance with law. As there was no action from the Respondent, petitioner filed Contempt Petition No. 798 of 2006. When the Contempt

Petition was pending, on 04.12.2006 impugned order was passed informing the Petitioner company that ""no excess stamp duty has been paid by

the Petitioner and that the request for Remission of stamp duty is rejected as it involves huge Revenue Loss to the Government and Local Body"".

In view of the order passed, the Contempt Petition was closed. Challenging the impugned order, Petitioner company filed present writ petition

seeking for writ of certiorarified mandamus to quash the impugned order and to direct refund of excess stamp duty paid Rs. 44,80,000/-.

4. Government resisted writ petition by filing counter affidavit stating that the claim of the Petitioner that the notification dated 25.12.1937 was

extended to Pondicherry is incorrect and that the Indian Stamp Act, 1899 was extended in its bare form and there was no extension of any

notification or circular as claimed to have been issued in 1937 and that the notification made in British India in 1937 cannot be claimed to be

applicable to Pondicherry which was under French rule up to 1954. Stand of the Respondent is that while the enactment passed by the Indian

Parliament was extended to Pondicherry, Stamp Act was also extended only it its bare form. There has been no extension of any notification or

circular of 1937.

5. Contending that Respondent failed to consider the scope of Central Govt. notification No. 12 dated 25.12.1937, learned Counsel for the

Petitioner Mr. T.R.Senthilkumar inter alia raised the following contentions:

The Respondent failed to appreciate the transaction between the Petitioner company and its Parent company and the transaction is clearly exempt

from stamp duty as per notification No. 12.

Cogent reading of Section 3 and 5 of the Pondicherry [Extension of Laws] Act, 1964 makes abundantly clear that the Indian Stamp Act was

extended to Pondicherry with all rules, notifications, orders, regulations and byelaws made or issued by the Central Government under the

provisions of such Act.

Respondent erred in rejecting the refund of stamp duty to the Petitioner company as it involves huge Revenue loss to the Government and local

body.

6.The learned Senior Govt.Pleader (Pondy) Mr. T.Murugesan, submitted that the enactments passed by the Indian Parliament were extended to

Pondicherry Territory, the Stamp Act was also extended only in its bare form and there is no extension of any notification or circular of 1937. It

was further argued that even if there was any such notification unless Pondicherry Govt. has notified it, the same cannot be made applicable and

there is nothing to show that application was notified to Pondicherry. The Senior Govt.Pleader (P) further contended that the impugned order

rejecting the stamp duty application for refund is correct and well reasoned. Senior Govt.Pleader (P) would further submit that there was no excess or penalty paid warranting refund of excess stamp duty as contemplated u/s .45 of Stamp Act.

7. Claiming benefit of notification No. 12 dated 25.12.1937, petitioner claims that the same transaction between Petitioner company and its

subsidiary company S&S Hitech Security Systems is clearly exempted from payment of stamp duty.

8. Much reliance was placed notification No. 12 dated 25.12.1937, which reads as under:

49. Instruments evidencing transfer of property between companies limited by shares as defined in the Indian Companies Act,1913, in a case

where [i] at least 90 percent of the issued share capital of the transferee company is in the beneficial ownership of the transferor company, or [ii]

where the transfer takes place between a Parent Company and a Subsidiary Company one of which is the beneficial owner of not less that 90

percent of the issued share capital of the other, or [iii] where the transfer takes place between two Subsidiary Companies of each of which not less

than 90 percent of the issued share capital is in the beneficial ownership of a common Parent Company. Provided that a Certificate is obtained by

the parties to the instrument from the officer appointed in this behalf by the Chief Commissioner of Delhi concerned that the conditions above

prescribed are fulfilled.

Case of Petitioner is that by combined reading of Section 3 and 5 of Pondicherry [Extension of Laws] Act, 1968 (for short Extension Act) would

make it clear that Indian Stamp Act was extended to Pondicherry with all rules, notifications, orders regulations and byelaws made or issued by the

Central Government under the provisions of the Act and therefore the above notification is squarely applicable to the Petitioner transaction.

9. As per Section 3 of the Pondicherry [Extension of Laws] Act, 1968. The Acts specified in Part I of the Schedule as they are generally in force

in the Territories to which they extend and the Acts specified in Part II of the Schedule as they were in force on the 1st day of August 1966, in the

State or Union territory mentioned there against shall extend to Pondicherry, subject to the modifications, if any, specified in the Schedule.

10. Case of Petitioner is that Indian Stamp Act is shown in Part II of the Schedule of Pondicherry [Extension of Laws Act]. Modifications

mentioned in the above Act are pertaining to Sections 2[26], 3, 19A, 57 and 75A and a few entries in the Schedule I of the Stamp Act. The

amendments made has nothing to do with the notifications, orders, rules and no notification or order is deleted/withdrawn. Thus case of Petitioner

is that Indian Stamp Act 1899, was extended to Union Territory of Pondicherry as in force in the State of Madras as on 01.08.1966 with

modifications mentioned in the above Sections and few entries in Schedule I. The sum and substance of the Petitioner''s contention is that in the

inter se transfer between Parent and Holding companies, as per the said notification stamp duty is not payable.

11. Whether Indian Stamp Act 1899, was extended only in its bare form and whether there was any extension of notification or circular is the point

falling for consideration.

12. Notification of the year 1937 pertained to the companies which were in existence at that time when the then Companies Act, 1913 was in

force. By virtue of Section 644 of the Indian Companies Act, 1956, read with Schedule 2 there of, the Companies Act 1913 was repealed. In

view of the repeal of Companies Act 1913, Petitioner cannot claim benefit of notification No. 12 dated 25.12.1937.

13. Any notification under the Indian Stamp Act needs a notification u/s 9A of the Act. u/s 9 of the Stamp Act, the Government may by rule or

order publish in official gazette reduce or commit and the Government in cases not covered by Item 91 of List I of Schedule 7 to the Constitution is

the State Government. In Pondicherry, there is no notification at all up to the date of notifying this alleged 1937 notification. There is no automatic

application of any notification of Central Government in Pondicherry. Unless the State Government notifies by a rule or an order any decision to

reduce or commit, the question of application of this notification does not arise at all. Further more, Section 9 of the Act speaks only of reduction

or remission of stamp duty and not of refund of any stamp duty already paid.

14. After the advent of Pondicherry Administration Act, 1962, the laws made by the Indian Parliament were extended to the Pondicherry by the

Central Government through legislative process, viz., Laws Regulation and Laws Extensions. By virtue of Part II of Schedule Indian Stamp Act

was extended to Pondicherry. Part II extended Indian Stamp Act to Pondicherry reads as under:

Year No. Short title In force in a State or a Modifications

Union Territory

1899 2 The Indian As in force in the State of In Sec.2, after

Stamp Act, 1899 Madras on the 1st day clause (25),

of August, 1966

insert:

(26)''State Government''in relation to the Union Territory of

Pondicherry means the administrator thereof.

15. A reading of Schedule Part II makes it clear that Indian Stamp Act was extended in its bare form to Pondicherry without extension of any

other notification. Subsequently, Pondicherry has enacted its own Stamp Act and also made amendments in the Indian Stamp Act, wherever

necessary.

16. Learned Senior Govt.Pleader (P) submitted that Union Territory Act was passed in 1963, providing for a Government as per Article 239A

and as such there is a legislature in Pondicherry. Therefore, unless the legislature passes suitable order in respect of extension of any notification, no

extension is possible. As rightly submitted by the learned Senior Govt.Pleader (P) there was no amendment to the Act nor is there any extension of

any notification. If the plea of writ petitioner is to be accepted it would amount to encourage of evasion of stamp duty.

17. Learned Counsel for the Petitioner has drawn Court''s attention to Tamil Nadu Government G.O.Ms. No. 1224 Revenue dated 25.04.1964

(P-14, SINo 38 of Addl T/S) where the contents are identical to 1937 notification No. 12 issued by the Central Government. On behalf of

Petitioner it was contended that by virtue of Pondicherry [Extension of Laws] Act, all rules, notification, orders, byelaws, etc issued under the

Indian Stamp Act as applicable to Tamil Nadu, shall extend to Pondicherry from the date of commencement of the Pondicherry (Extension of

Laws) Act. Learned Counsel for the Petitioner further submitted that as per Section 6(1)(b), any reference in any Act/Rules/Notifications/orders

etc., to the State Government shall be construed as reference to Central Government and also as including a reference to Administrator. It was therefore contended that the link between Central Government and State Government has been bridged through Section 6(1)(b) of the

Pondicherry (Extension of Laws) Act. It was therefore argued that by conjoint reading of Sections 3, 5 and 6 of Pondicherry Extension Act would

make it very clear that Tamil Nadu Government G.O.Ms. No. 1224 Revenue dated 25.04.1964 is squarely applicable to Pondicherry as from the

commencement of Pondicherry (Extension of Laws) Act.

18. There is no substance in the contention that by virtue of Section 5 and Section 6(1)(b) Tamil Nadu Government G.O.Ms. No. 1224 dated

25.04.1964 will be applicable to Pondicherry. As per Section 5 all rules, notification, orders , byelaws made or issued by the Central Government

under the provisions of any Act to which such Act extends from the commencement of provisions of such Act in Pondicherry extended to and

come into force in Pondicherry. As per Section 5 Central Government rules, notification, orders or regulations issued by Central Government alone

would be applicable. As per Schedule Part II of Pondicherry Extension Act. Indian Stamp Act as in force in the State of Madras on 01.08.1966

would be applicable to Pondicherry. G.O.Ms. No. 1224,Revenue dated 25.04.1964 exempting payment of stamp duty by the Government of

Tamil Nadu cannot be automatically be applicable to Pondicherry. By virtue of Section 5 that it cannot be contended that notification issued by

Govt. of Tamil Nadu is automatically extended. By reading of Part II would make it clear that Indian Stamp Act in its bare form as in force in the

State of Tamil Nadu has been extended. On the strength of Section 5 it cannot be contended that notification No. 1224 dated 25.04.1964 would

be applicable to Pondicherry. Unless legislature of Pondicherry passes appropriate order for extension of notification, there is no question of

automatic extension of notification issued by Government of Tamil Nadu.

19. Petitioner claims that they presented a petition u/s 45 for refund of the stamp duty paid and it was wrongly rejected by the Respondent. As

rightly submitted by the Senior Govt.Pleader (P) Section 45 does not enable any one to make application for refund of stamp duty paid. On the

other hand Section 45 Sub-section(1) speaks of refund of penalty or excess stamp duty paid.

Sub-section(1) enables the Chief Controlling Revenue Authority to refund the whole or part of the penalty actually paid u/s 35 or 40 on application

made within one year from the date of payment. Under Sub-section (2), that Authority can also consider the question of proper stamp duty and

refund the duty in excess of that which is legally chargeable, on application made within three months (Six months in Tamil Nadu and Pondicherry)

It is only when the penalty or stamp duty has been paid in excess such amount be refunded u/s . 45. Petitioner claims for refund of entire stamp

duty paid. As rightly contended by the Senior Govt.Pleader (P) the claim u/s .45 is unsustainable. It is pertinent to note that Petitioner paid the

stamp duty as charged by the Sub-Registrar without any protest.

20. For the purpose of invoking Section 45 there should have been circumstances warranting application of Section 35 or 40. Section 40 and 42

of the Act requires endorsement by the Collector. Therefore, invoking of Section 45 is a consequential act and cannot be directly invoked. As

rightly submitted by the Senior Govt.Pleader (P) Chief Revenue Authority referred to in Section 45(1) and (2) does not have jurisdiction to deal

with such application as filed by Petitioner for refund of stamp duty. Section 45 does not provide for any ground such as ""Oversight"" or ""mistake

or ""ignorance"" to be the basis for making a claim for refund.

21. Petitioner seeks writ of certiorarified mandamus to quash the order and to direct the Respondent to refund the stamp duty of Rs. 44,80,000/-.

Issuance of writ of mandamus presupposes the right vested in the writ petitioner. The writ petitioner has not established any right for refund of

stamp duty. Exercising jurisdiction under Article 226 of the Constitution of India writ of mandamus could be issued to direct the Authorities to act

in accordance with statutory provisions and not otherwise. The Petitioner has not established the right for refund of stamp duty and therefore the

Petitioner is not entitled to the relief sought for.

22. In the result, the writ petition is dismissed. No costs.

