(2016) 06 DEL CK 0008

In the Delhi High Court

Case No : O.REF. No. 2 of 2016

Chief Controlling Revenue Authority

Date of Decision : 03-06-2016

Acts Referred:

Citation : (2016) 6 ADDelhi 417

Hon'ble Judges : Rajiv Sahai Endlaw, J.

Bench : Single Bench

Advocate : J.M. Kalia, Advocate, for the Appellant; D.K. Rustagi, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Rajiv Sahai Endlaw, J.—On 2nd May, 2016 when this reference first came up before this Bench the following order was passed:-

"1. This is a reference by the Chief Controlling Revenue Authority (CCRA), Delhi under Section 57 of the Stamp Act, 1899 posing the following question:

"Whether the notification no. 13 of 25-12-1937 extending benefit of remission in stamp duty in case of subsidiary companies as applicable in the then province of Delhi has any continuous validity and applicability in view of notification no.GSR 894 dated 30.09.1958 by which the central Government extended the Indian Stamp (Punjab Amendment) Act, 1958 replacing the previous and then prevalent stamp law in union territory of Delhi w.e.f. 01-10-1958."

2. No Roster having been designated for such reference, The matter upon filing has been specially marked.

3. Section 57 of the Act is as under:

"57. Statement of case by Chief Controlling Revenue-Authority to High Court.-(1) The Chief Controlling Revenue-Authority may state any case referred to it under Section 56, sub-section (2), or otherwise coming to its notice, and refer such case, with its own opinion thereon,-

(a) if it arises in a State-to the High Court for that State;

(b) if it arises in the Union territory of Delhi to the High Court of Delhi;

(c) if it arises in the Union territory of Arunachal Pradesh or Mizoram, to the Gauhati High Court (the High Court of Assam, Nagaland, Meghalaya, Manipur and Tripura);

(d) if it arises in the Union territory of the Andaman and Nicobar Islands, to the High Court at Calcutta;

(e) if it arises in the Union territory of the Lakshadweep, to the High Court of Kerala; (ee) if it arises in the Union territory of Chandigarh, to the High Court of Punjab and Haryana;

(f) if it arises in the Union territory of Dadra and Nagar Haveli, to the High Court of Bombay;

(2) Every such case shall be decided by not less than three Judges of the High Court to which it is referred, and in case of difference, the opinion of the majority shall prevail.

4. None having been arrayed as a respondent in the petition, I have enquired from the counsel for the CCRA as to in which case the need for making a reference arose.

5. The counsel for the CCRA contends that the reference as the present can be made either when a case is stated by the Collector of Stamps to the CCRA under the provisions of Section 56(2) of the Act "or otherwise". It is stated that this reference has not been made upon any reference by the Collector of Stamps but invoking the "or otherwise" provision.

6. After some arguments however the real reason for making this reference emerges. The said question qua which reference is made, is pending consideration in W.P.(C) No. 7509/2015 titled PDS Multinational Fashions Limited v. Collector of Stamps and the earlier judgment dated 4th December, 2009 of a Single Judge of this Court in CA No. 466/2008 in Company Petition No. 50/2003 titled Delhi Towers Ltd. v. Govt. of NCT of Delhi which appears to answer the aforesaid question contrary to the opinion of the CCRA accompanying this reference.

7. The counsel for the CCRA has contended that because of the judgment of the Single Judge in Delhi Towers Ltd. supra, the judgment in PDS Multinational Fashions Limited supra is also likely to be against the CCRA and to avoid such a situation, this reference has been made and which is required to be considered by a Three Judge Bench of this Court.

8. I entertain doubt whether the CCRA can surpass the judgment of the Single Judge of this Court by invoking the reference provision under Section 57 of the Act. If the petitioner was aggrieved therefrom, the petitioner should either have

taken the Delhi Towers Ltd. matter further or should now have the pending writ petition referred to a larger bench. Prima facie it appears that once a Single Judge of this Court has already pronounced on the issue, the same binds the CCRA and CCRA ought not entertain any doubt to make a reference.

9. The counsel for the petitioner to satisfy in this respect.

10. Mr. D.K. Rustagi, Advocate present in Court has been requested to pro-bono assist this Court on the said aspect.

11. He has graciously agreed to the same.

12. One of the three sets of the petitions filed by the petitioner has been handed over to Mr. D.K. Rustagi, Advocate/Amicus Curiae. A copy of this order be also handed over to him.

13. This exercise is undertaken so that unless there is a proper reference, the time of three Judges of this Court is not wasted if there is no proper reference.

14. The counsel for the CCRA has handed over a copy of the judgment of Justice Gita Mittal in Delhi Towers Ltd. supra.

15. The Court Master to make a copy of the same and supply the same also to the learned Amicus Curiae.

16. The file of W.P.(C) No. 7509/2015 be also sent to this Court on the next date of hearing.

17. List on 16th May, 2016.

2. The counsel for the Chief Controlling Revenue Authority (CCRA) and the learned Amicus Curiae have been heard on the following aspects:-

A. whether a reference under Section 57 of the Stamp Act, 1899 can be made by the CCRA "in abstract" or has to be necessarily in the context of stamp duty on a document/instrument chargeable to stamp duty;

B. whether a reference under Section 57 of the Stamp Act can be made when there is already a pronouncement of this Court on the subject; and,

C. whether the aforesaid questions are also to be decided by the Three Judge Bench only.

3. The learned Amicus Curiae, with respect to the first of the aforesaid questions has argued that a "reference" cannot be in abstract and necessarily has to be in the context of the amount of duty with which a particular document is chargeable and has in this regard drawn attention to Section 59 of the Stamp Act which is as under:-

"59. Procedure in disposing of case stated (1) The High Court, upon the hearing of any such case, shall decide the questions raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded.

(2) The Court shall send to the Revenue-Authority by which the case was stated, a copy of such judgment under the seal of the Court and the signature of the Registrar; and the Revenue-Authority shall, on receiving such copy, dispose of the case conformably to such judgment."

and has contended that Section 59(2) requiring the Revenue-Authority to "dispose of the case conformably" with the judgment of this Court on the reference made is indicative of no Reference in abstract being maintainable. It is argued that the words "or otherwise coming to its notice" in Section 57(1) have to be understood as, it being open to the CCRA to make a reference on doubt arising as to the amount of duty with which any instrument is chargeable otherwise also than on receipt of a statement of case under Section 56 of the Act.

4. Reliance is placed on Usuf Dadabhai v. Chand Mahomed AIR 1926 Bom. 51 (FB) holding (i) that there must be a case which is to be disposed of by the Revenue-Authority on receipt of the High Court judgment and if a reference in abstract were to be entertained there would be no case for the Revenue-Authority for disposal on receipt of the judgment of the Court; (ii) that Section 57(1) permits reference in relation to "any case" whether referred to the CCRA under Section 56 or otherwise coming to its notice and thus there necessarily has to be a "case pending" and when there is no pending case there can be no reference; (iii) that no substantial question of law can be decided in abstract; and, (iv) that an obligation of the CCRA to make a reference under Section 57 is enforceable obligation and which action implies existence of a case.

5. The learned Amicus Curiae with respect to the second of the aforesaid questions has contended that once the question referred has been answered in the judgment of the Single Judge, the question of the CCRA entertaining any doubt as to the amount of duty with which any instrument is chargeable does not arise. Attention in this regard is invited to an old judgment of the Full Bench of the High Court of Lahore in L. Puran Chand, Proprietor, Dalhousie Dairy Farm v. Emperor laying down that a reference can be made only when a doubt is entertained. It is further argued that the judgment of this Court in Delhi Towers Ltd. supra is a binding precedent on CCRA. Relying upon State of Bihar v. Kalika Kuer (2003) 5 SCC 448 it is contended that even a bench of coordinate jurisdiction, considering the question later cannot say that the earlier decision was rendered per in curium on the ground that a possible aspect of the matter was not considered or raised before the Court or more aspects should have been gone into by the Court deciding the matter earlier.

6. Else, the learned Amicus Curiae has argued that a reference as per Section 57 is necessarily required to be accompanied with the CCRA''s own opinion and in which respect also the subject reference is lacking.

7. Though the learned Amicus Curiae has also veered towards arguments on the merits of the reference but the same is not the scope of the hearing and thus it is not deemed necessary to record the contentions in that respect.

8. Per contra, the counsel for the CCRA has argued that the matter needs to be considered by a Three Judge Bench only. He has invited attention to the words "every such case shall be decided by not less than three Judges of the High Court to which it is referred" in Section 57(2) and has argued that this Bench cannot pass an order of dismissal of reference even if not convinced with respect to the first two questions above. He has otherwise referred to:

a. Chief Controlling Revenue Authority and Superintendent of Stamps v. The Maharashtra Sugar Mills Ltd. AIR 1950 SC 218 laying down that Section 57 is not only for the benefit of the CCRA but is coupled with a duty cast on him, as a public officer, to do the right thing and when an important and intricate question of law in respect of the construction of a document arises, as a public servant it is his duty to make the reference.

b. Banarasi Dass Ahluwalia v. The Chief Controlling Revenue Authority, Delhi AIR 1968 SC 497 laying down that when a reference is made and it involves a substantial question of law, whether the case is pending or not, CCRA is bound to state the case in compliance with its obligation and such obligation cannot be construed to depend upon any subsidiary circumstance such as the pendency of a case before the CCRA.

c. S. Sarup Singh v. Union of India AIR 1966 Punjab and Haryana 169 laying down that the High Court in exercise of power under Article 226 can direct CCRA to state the case under Section 57(1), though no matter is pending before it.

d. Union of India v. S. Sarup Singh AIR 1968 Delhi 219(DB) but which merely states that words "otherwise coming to its notice" in Section 57(1) include cases which come to notice of CCRA in exercise of its revisional powers under Section 56(1).

e. Sardar Deorao Jadhav v. State of Madhya Pradesh AIR 1991 Madhya Pradesh 247 (FB) laying down that when a reference is once entertained by the High Court and it is in seisin of the case referred, it cannot be dismissed summarily.

I may record that the counsel for the petitioner also has cited a number of judgments on the merits of the case as well as on "per in curium" and "res-judicata" but considering the limited nature of the exercise which I had started to undertake, reference thereto is not apposite at this stage.

9. On second thought, I am of the view that the exercise which I had set out to do would not serve any purpose and even if I, on an analysis of the judgments cited and consideration of the matter, were to conclude that first two of the three questions on which I heard the counsels are to be decided against the petitioner, I would not be in a position to dismiss or reject the reference as the same is required to be considered by the three Judges Bench of this Court only.

10. Accordingly, the matter be placed before Hon''ble the Chief Justice for directions and if Hon''ble the Chief Justice so directs, be listed on 15th July, 2016.

11. The Court expresses gratitude to Mr. D.K. Rustagi, Advocate for rendering valuable assistance to the Court and discharges him from further appearance till so directed.

