

(2017) 08 KAR CK 0022
In the Karnataka High Court
Case No : 104140 of 2013 (GM-ST of RN)

Dalmiya Cement Venture Limited

APPELLANT

Vs

The State of Karnataka & Anr

RESPONDENT

Date of Decision : 22-08-2017

Acts Referred:

Constitution of India, Article 265 -
Taxes not to be imposed save by authority of law
Karnataka Stamp Act, 1957, Section 44 (2)
a> - Power to Revenue Authority to refund pe

Citation : (2017) 08 KAR CK 0022

Hon'ble Judges : S.Sujatha

Bench : SINGLE BENCH

Advocate : Venkatesh C Mallabadi, Ameet Kumar Deshpande, A.Syed Habeeb

Final Decision : Allowed

Judgement

1. The petitioner has challenged the order/endorsement dated 24.8.2013 passed by the respondent No.2 in file No. STP/153/2012-13 (the copy of which at Annexure-G to the writ petition) interalia seeking direction to the respondent Nos. 2 to 4 to refund the excess stamp duty of Rs.10,11,810/- with interest at 6% per annum from the date of receipt of excess stamp duty till the date of actual payment.
2. The petitioner is a Public Limited Company registered under the Indian Companies Act, 1956. The petitioner got registered several lands between 11th June and 5th September 2012 at the 4th respondent office and has paid stamp duty in excess. Hence, sought for refund of the same which came to be refused by the respondents. Hence this writ petition.
3. The learned counsel Sri Venkatesh C Mallabadi, appearing for the petitioner submits that the order impugned herein suffers from patent error of jurisdiction and it is also against the principles of natural justice. The respondent No.2 exercising the powers under section 44 of the Karnataka Stamp Act, 1957

(hereinafter referred to as the "Act" for short) as a quasi judicial authority and therefore, an order in the form of endorsement, without extending sufficient opportunity to the petitioner to putforth its case, is wholly perverse and illegal. The learned counsel submitted that the interpretation of Section 44 of the Act as made by the respondent No.2 is against the purport of the law. According to the learned counsel, there are two circumstances in which the refund of excess duty can be made. One is that the amount of excess paid on the date of registration of instrument and another is, the amount of excess paid upon the order charging the stamp duty. According to the learned counsel in their interpretation as made out by the respondent No.2 would render the provision unconstitutional since it would amount to recovering or accepting the stamp duty in excess of what is not authorised by law, there is no provision to retain the excess stamp duty paid by the petitioner.

4. The learned Additional Government Pleader Sri Syed Habeeb, appearing for the respondents made an endeavor to justify the impugned order contending that the interpretation of Section 44 of the Act, made by the respondent No.2 is justifiable. No stamp duty paid in excess shall be liable for refund in terms of Section 44 of the Act.

5. Heard the learned counsel for the parties and perused the material on record.

6. The stamp duty that was required to be paid under the Act, on the date of conveyance was at the rate of 5.8%. The said rate of percentage of stamp duty was brought into effect from 1st April 2012, by Gazette notification dated 13.3.2012. Before the publication of the Gazette notification, the stamp duty required to be paid was at the rate of 6.8%. It is the case of the petitioner that being oblivious of the reduction of the stamp duty under the Gazette notification dated 13.3.2012, duty at the rate of 6.8% was paid on 30 sale deeds that were executed after the rates of stamp duty was reduced. The sale deeds were registered between 11th June and 12th September 2012. The petitioner having found that mistakenly the stamp duty was paid in excess of the amount of stamp duty, legally payable, gave a representation on 5th October 2012 to the respondent No. 4, claiming the refund of the amount towards excess stamp duty paid inadvertently.

7. It is significant to note that the respondent No.4 admitted the excess stamp duty paid by the petitioner to the tune of Rs.10,11,810/-, however, communicated to the petitioner on 12.10.2012 (as per Annexure-F to the writ petition) that the refund can be effected only after prior sanction of the Chief Controlling Revenue authority i.e., respondent No.2 herein and requested the petitioner to approach the head office at Bengaluru for necessary process in this regard. Pursuant to which the petitioner approached the respondent No.2 who rejected the claim of the petitioner.

8. At this juncture, it is beneficial to refer to section 44(2) of the Act which runs thus; " (2) Where, in the opinion of the Chief Controlling Revenue Authority,

stamp duty in excess of that which it is legally chargeable has been charged and paid under [any of the provisions of this Act], such authority may, upon application in writing made [within six months from the date of registration of the instrument or the order charging the same], refund the excess.

[Provided that with sanction of the State Government the Chief Controlling Revenue Authority may make the refund after the period specified in sub-section (1) or (2)].

9. The Hon'ble Apex Court in the case of Mafatlal Industries Ltd V/s Union of India, reported in (1997) 5 Supreme Court Cases 536, has held thus; "Any provision appearing or trying to bar recovery of illegally collected tax is violative of Article 265 of the Constitution and must be struck down. Once it is established that more than what is payable under the statute has been collected from the taxpayer, the taxpayer automatically gets a right to get back the whole amount. If the right is sought to be effectively taken away by imposing conditions, then the law imposing these conditions must be declared to be bad and ultra vires the Constitution.

There is another aspect of this matter. The Exercise Officer cannot tax more than what is permitted by the statute. If the levy is in excess of the statute, then its retention by the State is unauthorised by law. What is being retained is not in enforcement of the charging section but something else. Such illegally collected tax the money has to be utilised by the State and is not within the disposing power of the State. If the money has to be utilised by the State, the State has to find out some legitimacy for having possession of the money.

Protection under Article 265 afforded to the citizens from State oppression in financial matters. Article 265 must be implemented in letter and spirit as it stands and all the tax laws and all Government actions to realise and retain tax must be tested on the anvil of this guarantee. The courts should jealously guard against any attempt to whittle down or do away with any of the guarantees given under the Constitution to the citizens. If any law is passed for retention of illegal levy, it must be struck down. If the Court comes to the conclusion that a levy of tax is unlawful, the Court will direct the Government to return the tax. It is not for the Court to enquire how the taxpayer has managed his affairs after payment of the unlawful levy. The Court cannot, by torturing the language of Article 265 or by any other means, construe it so as to give it a meaning which it does not naturally bear."

10. In the light of the said judgment, it can be held that no unjust enrichment can be appreciated, as recovery or accepting the duty in excess of what is authorised by law would be against the mandate of Article 265 of the Constitution of India. No amount received in excess than what is stipulated chargeable can be retained by the authorities. The same would be construed as the amount collected without authority of law which is wholly unsustainable. There is no question of petitioner being charged. It is an admitted fact that the

petitioner paid excess stamp duty to an extent of 1%, the same cannot be retained by the authorities, despite the application made by the petitioner for the refund of the excess amount within the period stipulated under section 44 of the Act. The authorities are bound to refund the excess stamp duty collected in terms of section 44 (2) of the Act.

11. Hence, the impugned order/endorsement at Annexure-G is quashed and consequently, the respondent Nos. 2 to 4 are directed to refund the excess stamp duty of Rs.10,11,810/- to the petitioner with interest at the rate of 6% per annum from the date of filing of the application by the petitioner till the date of actual payment. The writ petition stands allowed accordingly.