(2010) 05 AHC CK 0078

In the Allahabad High Court

Case No : C.M. W.P No. 21008 of 2010

Devendra Singh — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 25-05-2010

Acts Referred:

Stamp Act, 1899 — Section 33, 56, 9, 9(1)

Citation : AIR 2010 All 149 : (2011) 1 RCR(Civil) 512 : (2011) 1 RCR(Criminal) 512

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—Heard Sri Anupam Kulshrestha, learned Counsel for the Petitioner and the learned standing counsel.

2. Petitioner No. 1 and Respondent No. 5 jointly took financial assistant of Rs. 10900000/- from the Central Bank of India for the purposes of establishing a cold storage. To secure the aforesaid loan Petitioner executed a document. The aforesaid document was referred u/s 33 of the Indian Stamp Act for determination of the deficient stamp duty. The Petitioner in the said proceedings claimed that the document is exempt from payment of stamp duty vide notification dated 10th June 1998 issued u/s 9 of the Indian Stamp Act which provides for remission of stamp duty exceeding Rs. 100/- on every instrument employed for obtaining loan or other financial assistance for agricultural activity. The Additional District Magistrate (Finance and Revenue) vide order dated 7.6.2005 refused to accept the contention of the Petitioner and held that activity of a cold storage is not exempt under the aforesaid notification and thus determined the deficiency to the tune of Rs. 7,63,000/-. The said order was modified by the order dated 30.7.2005 and the liability to pay the said stamp duty was apportioned between Petitioner No. 1 and the Respondent No. 5 is in the ratio of 50:50.

3. Aggrieved by the aforesaid, Petitioner preferred a revision u/s 56 but the same has also been dismissed vide order dated 26.2.2010.

4. Learned Counsel for the Petitioner has submitted that the document in question is exempt from stamp duty in view of the aforesaid notification dated 10th June 1998.

5. The relevant portion of the aforesaid notification issued u/s 9 of the Act reads as under:

In exercise of the powers under Clause (a) of Sub-section (1) of Section 9 of the India Stamp Act, 1899 (Act No. II of 1899) as amended from time to time in its application to Uttar Pradesh, the Government is pleased to remit, with effect from the date of publication of this notification in the Official Gazette, the stamp duty exceeding Rs. 100/- (Rupees one hundred) chargeable on every instrument employed for obtaining loan or other financial assistance (including a mortgage, charge, hypothecation or documents executed by sureties) for acquisition of tractor or machinery relating to agricultural activity where such instrument is executed by an agriculturist in favour of a Bank.

6. The instrument used for obtaining loan or financial assistance for establishing a cold storage is neither an instrument for acquisition of tractor or machinery relating to agricultural activity nor is an instrument executed by an agriculturist within the meaning of the aforesaid notification. According to Explanation I to the aforesaid notification the expression ''agriculturist'' means a person engaged in any of the activities specified therein. The activities so specified does not cover the activities of running a cold storage.

7. In Atma Ram Misra v. Bank of India 1989 RD 489 : 1989 A LJ 1398, this Court held that cold storages serve a useful purpose in advancing interest of agriculturist while considering the expression ''agriculturist'' and ''agricultural purpose'' used in context with U.P. Agricultural Credit Act, 1973. However, the definition of ''agriculture and agricultural purpose'' used therein cannot be imported in context with the notification under this Act wherein word ''agriculturalist'' has been used and has been defined differently in the explanation to the notification itself having a plain, simple and clear meaning which would not include activity of cold storage within those of an agriculturist.

8. In view of the above, the benefit of remission as per the above notification is not admissible to the Petitioner. Therefore, the authorities have committed no error in refusing the relief as claimed by the Petitioner.

9. The writ petition as such is devoid of merit and is dismissed.