(2007) 04 BOM CK 0099

In the Bombay High Court

Case No : Writ Petition No. 1405 of 2005

Empire Industries Limited — APPELLANT

Vs

Chief Controlling Revenue Authority, Maharashtra State, Superintendent of Stamps and State of Maharashtra — RESPONDENT

Date of Decision : 11-04-2007

Acts Referred:
Bombay Stamp Act, 1958 — Article 36A, 54, 53, 53A

Citation : (2007) 6 ALLMR 855 : (2007) 5 MhLj 565

Hon'ble Judges : V.M. Kanade, J

Bench : Single Bench

Advocate : Shailesh Shah and Mohana Nair, for the Appellant; K.R. Belosey, Acting Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

V.M. Kanade, J.—Heard the learned Counsel appearing on behalf of the Petitioner and the learned Counsel appearing on behalf of the Respondents.

2. The Petitioner is challenging the judgment and order passed by the Respondents dated 2/8/2003 and 4/12/2004.

FACTS:

3. Brief facts are as under.

4. The Petitioner -Company entered into leave and license agreement with Industrial Investment Limited for a period of 33 months i.e. from 01/03/2002 ton 01/12/2004. This leave and license agreement was executed on 28/02/2002. The Petitioner paid stamp duty of Rs. 1,60,000/- on the said leave and license agreement under Article 36A(b) read with Article 36A(a)(ii) of Schedule-I of the Bombay Stamp Act 1958 (For short "the said Act").

5. A demand notice was served on the Petitioner dated 04/04/2002 whereby the 2nd Respondent informed the Petitioner that the stamp duty payable on the

leave and license agreement was Rs. 4,55,020/- and after deducting the amount of Rs. 1,60,000/- which was already paid, the Petitioner was called upon to pay balance amount of Rs. 2,95,020/- within a period of 60 days from the date of notice. Thereafter, written statement was filed by the Petitioner and after giving hearing to the Petitioner, an order was passed dated 02/08/2003 by Respondent No. 2 directing the Petitioner to pay additional stamp duty of Rs. 2,95,020/-. The Superintendent held that though the period of leave and license agreement was stated to be 33 months, Clause 27 of the agreement granted an option of renewal for further 11 months and, for that purpose, the licensee had agreed to provide a bank guarantee of Rs. 2 crores to the Petitioner as a security deposit under Article 54(ii) of the Bombay Stamp Act and, therefore, the agreement was, in fact, a lease and not a leave and license agreement as stipulated under Article 36A(a) Sub-clause (ii).

6. The Petitioner preferred an appeal before the 1st Respondent. The 1st Respondent rejected the application which was filed by the Petitioner and enhanced the duty which was payable and a direction was given to the Petitioner to pay the amount of Rs. 15.75 lacs towards the stamp duty as against the direction given by Respondent No. 2 to pay the amount of Rs. 2,95,020/-.

SUBMISSIONS:

7. The learned Counsel appearing on behalf of the Petitioner submitted that the Respondent No. 1 had committed an error of law which was apparent on the face of record by holding that the instrument in question fell under Article 36A(a)(iii). He submitted that the licensee, in fact, had vacated the premises before the lapse of 33 months. He submitted that the said clause in the agreement of leave and license could not be read in isolation and had to be read in the context of and in relation to other clauses in the said agreement. He submitted that there was no question of invoking the said clause for the purpose of evading the stamp duty. He invited my attention to the order passed by the 2nd Respondent. He further submitted that the Respondent No. 1 - Chief Controlling Revenue Authority had further erred in enhancing the duty from Rs. 2,95,020/- to Rs. 15.75 lacs. He submitted that in the absence of appeal or cross-objections filed by the Respondent No. 2, the Respondent No. 1 did not have any authority in law to enhance the said duty which was imposed by the 2nd Respondent. He invited my attention to Section 53 and 53A of the said Act.

8. Mr. Belosey, the learned Acting Government Pleader appearing on behalf of the Respondents -State submitted that both the authorities had passed a reasoned order. He submitted that the Chief Controlling Revenue Authority has exercised his power of enhancing the stamp duty u/s 53. He submitted that the Chief Controlling Revenue Authority has power to exercise his appellate as well as revisional powers and he was competent to suo motu call for the record and examine whether the duty which was levied by the lower authority is proper or not. He submitted that this power was vested in the Chief Controlling Revenue Authority in order to ensure that there is no loss of revenue caused to the

Government and in an appropriate case where the Chief Controlling Revenue Authority was of the opinion that the statutory power was not properly exercised by the lower authorities, he had ample power vested in him pursuant to Sections 53 and 53A even to suo motu exercise the said power. He submitted that the Chief Controlling Revenue Authority had accordingly levied the stamp duty @ 10% on the security deposit since the said instrument was construed to be a lease and not a leave and license agreement and, therefore, even on the security deposit, an amount of 10% was to be levied towards the stamp duty and he submitted that the order was, therefore, perfectly in order and there was no reason for this Court to interfere with the order while exercising its writ jurisdiction.

FINDINGS AND CONCLUSION:

9. In order to examine the rival contentions which are made by both parties, the relevant Article which has to be examined is Article 36A which reads as under:

36A. LEAVE AND LICENCE AGREEMENT

(a) Where the leave and licence agreement is with a licence fee or rent fixed or otherwise,

(i) for a period not exceeding one year without any renewal clause Two thousand rupees;

(ii)for a period exceeding one year but not more than three years without any renewal clause Ten thousand rupees;

(iii) for a period exceeding The same duty as is three years with or without any leviable on a lease renewal clause under Article 36;

(b) Where the leave and licence The same duty as is agreement is executed for security leviable under clause deposit or money advanced with (a)(i), (ii) or (iii), as or without licence fee or rent fixed the case may be and in addition one per cent of security deposit or money advanced or to be advanced.

From the perusal of the aforesaid Article, it can be seen that if the agreement is for a period exceeding one year but not more than three years without any renewal clause then the stamp duty which would be levied on such agreement was Rs. 10,000/-. However, if the period of agreement exceeded three years with or without any renewal clause then the duty which was leviable was as per Article 36 i.e. the duty which is leviable on lease agreement.

10. In this context, therefore, clauses in the agreement will have to be taken into consideration. The agreement was executed at Mumbai on 28/02/2002. Clause (1) of the said agreement reads as under:

1. The Licensee shall by Leave and Licence of the Licensor hereby granted have the use of the licensed premises for three periods of 11 months each with effect from 1st day of March, 2002 expiring on 1st day of December, 2004 or until

terminated as hereinafter provided.

Clause 11 states that if the licensee commits any breach of the terms and conditions contained in the agreement, the licensor was entitled to terminate the license by giving 15 days'' notice in writing. Clause 14 stipulated that the licensor would not sell or transfer or dispose of the license premises so as to adversely affect the right of the licensee. Clause 15 stipulates that the agreement was a mere license and the licensor had, at all times, free and unobstructed access to the licensed premises. Clause 16 further stipulates that in order to ensure that the licensee vacates the premises within 7 days of the receipt of the notice in writing on the expiration or earlier determination of the agreement, the licensee would give security to the licensor. Clause 18 also further stipulates that on the expiration of the term of this license, the licensee shall handover possession to the licensor. Now, in the background of all these clauses, the relevant Clause 27 will have to be examined. Clause 27 of the said agreement reads as under:

27. It is agreed between the parties that in the event of the Licensee failing to hand over the vacant possession of the Licensed Premises to the Licensor on the expiry of the period of licence or the sooner determination thereof, whichever is earlier, in accordance with the terms of the said Leave and Licence Agreement, then and in that event, the Licensee shall notwithstanding what is contained in the Leave & Licence Agreement, be entitled to a grace period of 11 (eleven) months thereafter during which the Licensee may continue to occupy the Licensed Premises at the same Licence Fee and in accordance with the terms of the said Leave & Licence Agreement against the Licensee paying to the Licensor a sum of Rs. 15,00,000/-as and by way of additional Security Deposit which the Licensor shall hold on the same terms and conditions hereinbefore contained in relation to the initial Security Deposit amount of Rs. 1,50,00,000/-. During such grace period of 11 (eleven) months, the Licensee shall make every effort to vacate the Licensed Premises and against the Licensee surrendering/handing over vacant possession of the Licensed Premises to the Licensor or being ready and willing to surrender/handover vacant possession of the Licensed Premises to the Licensor, the foregoing provisions of Clause 26 of this Agreement shall apply.

Clause 28 further stipulates that if the licensee fails to handover possession on the expiry of the license period or expiry of the grace period of 11 months referred to under Clause 27, further conditions were imposed. If all these clauses are read in the proper context and in their natural sequence, it will be apparent that the period of license was 33 months only and for that purpose a particular security deposit was fixed. Clauses 26 and 27 of the agreement contemplated that if, before the period of 33 months, the possession of the premises was not handed over to the Petitioner, then further time to vacate was given and further additional security deposit was stipulated to handover possession and an additional security deposit of Rs. 15 lacs was to be deposited. Clause 28 provided that if even after the grace period of 11 months was over and possession was not yet handed over then further conditions were imposed. On conjoint reading of

Clause 1, Clause 26 and Clauses 27 and 28, it is apparent that certain penalty was imposed on the licensee on its failure to vacate the premises on either termination of the license period before the stipulated period or after the stipulated period as mentioned in Clause 27. Both the authorities, therefore, erred in construing the grace period which is mentioned in Clause 27 as a period in addition to the period mentioned in Clause 1. The grace period of 11 months which is mentioned in Clause 27 cannot be treated as a period in addition to the period mentioned in Clause 1. Clause 27, therefore, clearly stipulates certain circumstances under which the licensee is constrained to continue his possession and, therefore, certain additional conditions are imposed for its said extension.

11. Taking into consideration this factual situation, it cannot be said by any stretch of imagination that the said clause was incorporated for the purpose of evading the stamp duty or for the purpose of putting it beyond the operation of Article 36A(a)(iii). In my view, both the authorities, therefore, have clearly misdirected themselves in coming to the conclusion that the Article which was applicable to the leave and license premises is Article 36A(a)(iii). In my view, both the authorities, therefore, have committed an error of law which is apparent on the face of record. Both the orders, therefore, are liable to be set aside. Since the first submission which is made by the learned Counsel appearing on behalf of the Petitioner is accepted, there is no need to decide the second submission which is made by the learned Counsel appearing on behalf of the Petitioner regarding the power of the Chief Controlling Revenue Authority in suo motu reviewing the order passed by the Superintendent and in an appropriate case the said question shall be examined by this Court.

12. In the result, Writ Petition is allowed. The impugned orders are set aside. Rule is made absolute in terms of prayer Clause (a). Under the circumstances, there shall be no order as to costs.