

(2019) 07 GUJ CK 0124

In the Gujarat High Court

Case No : R/Special Civil Application No. 17309 Of 2016

Gail India Ltd.

APPELLANT

Vs

State Of Gujarat And 2 Other(S)

RESPONDENT

Date of Decision : 17-07-2019

Acts Referred:

Bombay Stamp Act, 1958 — Section 31, 32(A), 34, 35, 39, 44, 44(2)

Contract Act, 1872 — Section 50, 65

Constitution Of India, 1950 — Article 20, 226

Citation : (2019) 07 GUJ CK 0124

Hon'ble Judges : A.Y. Kogje, J

Bench : Single Bench

Advocate : Aishwarya Reddy, Dhawan Jayswal, Trivedi, Gupta

Final Decision : Allowed

Judgement

[1] This petition is filed by the petitioner company under Article 226 of the Constitution of India against the order dated 28.06.2004 passed by the

respondent No.3-Collector and Deputy Assistant, Superintendent of Stamps, Gandhinagar and order dated 29.12.2015 passed by the respondent No.2-

Chief Controlling Revenue Authority, Gujarat State, Gandhinagar.

[2] Learned advocate appearing for the petitioner submits that the subject matter is pertaining to the refund of the excess stamp duty has paid on the

documents of lease agreement. It is submitted that on account of the change in the area of land allotted by the GIDC to the petitioner, the document

was required to be valued again to meet with the actual land for which the document was executed. It is submitted as the lesser land was made

available by GIDC to the petitioner, it appeared that the petitioner had paid an excess amount of Rs.1,74,600/-.

[2.1] Learned advocate submits that this is in fact a second round of litigation as earlier also this Court by an order dated 19.01.2010 in Special Civil

Application No.10049 of 2009 has directed the respondents to consider the case and had quashed the order dated 21.04.2007 passed by the Chief

Controlling Authority in the very case. It is submitted that without considering the observations made by the Court in the aforementioned order, the

authorities have reiterated the previous order and the only reasonings given by the revenue authority is that the application for refund under Section 44

of the Bombay Stamp Act, 1958 (for short 'the Act') cannot be entertained as Section 44(2) of the Act would apply only where the payment of

stamp duty is under Section 35 or Section 39 of the Act.

[2.2] Learned advocate thereafter, relied upon the judgment of this Court in the case of Shamjibhai Ranchhodbhai Dabhi v/s. (The) Chief Controlling

Revenue Authority, reported in 2009 (2) GLH 191 and referring to para-15, it is stated that the act of the State Government to retain the additional

amount is unjust enrichment.

[2.3] Learned advocate also relied upon the judgment of the Apex Court in the case of U.P. Pollution Control Board and others v/s. Kanoria Industrial

Limited and another, reported in (2001) 2 SCC 549 to contend that under Article 226 of the Constitution of India, the High Court has powers to issue

mandamus for refund where the money is illegally calculated.

[3] Learned Assistant Government Pleader submitted that the exercise of making payment of the stamp duty was done considering the Article 20 of

the Act and on their own, after getting the land in question valued, had paid the stamp duty.

Thereafter, on account of the change in the measurement of the land covered under such document, another exercise of valuation was carried out

which turned out to be lesser than the stamp duty previously assessed and paid by the petitioner. Therefore, there were no proceedings under Section

34 or 39 of the Act so as to attract Section 44 of the Act, which provides for the refund.

[4] The Court has considered the rival submissions and perused the documents placed on record. The petitioner company which is a Public Sector

Undertaking under the Ministry of Petroleum and Natural Gas, Government of India, which is engaged in the project relating to Natural Gas and

Liquefied Petroleum Gas for the purpose of its activity of Gas Processing Project, allotted 70.87 hectares of land bearing plot No.1401 in GIDC

Industrial Area, Vaghodiya. The allotment to the petitioner was on lease basis for a period of 99 years with the premium of Rs.3,61,45,438/-.

Accordingly, under Section 31 of the Act, the valuation was carried out and the Sub-Registrar opined that an amount of Rs.29,61,100/- is to be paid as

stamp duty and Rs.5,93,000/- is to be paid towards the registration charges. Accordingly, stamp was purchased and lease deed was executed as the

validity period of the stamp was to expire on 08.10.2002.

[5] However, it appears that after the aforesaid process, the GIDC expressed its inability to handover the possession of 4.57 hectares of Government

land on account of some issues with the transfer of the Government land and accordingly, the remaining land of 66.30 hectares was made part of the

lease document. The remaining portion of the land being 4.57 hectares was not made part of the lease deed and therefore, for such portion of the land,

lease deed was agreed to be executed. However, in the meantime, it appears that the stamp duty used for the lease deed was inclusive of 4.57

hectares of land. Therefore, even as per the opinion of the Registrar, which was given by the Registrar vide letter dated 07.10.2002, an amount of

stamp duty payable comes out to Rs.27,86,500/-. Therefore, the petitioner company has paid excess stamp duty of Rs.1,74,600/-.

[6] The Court has taken into consideration the order passed in the previous round of litigation, where this Court has issued following directions:-

4. Heard the learned counsel for the respective parties. When the statutory authority has been empowered to hear the appeal against the order of

the Deputy Collector, the authority ought to have taken a practical view of the matter and the appeal should have been considered on merits. It is

required to be noted that the higher authority is required to consider the decision of the lower authority on merits in order to give substantial justice to

the parties if there are any error on the part of the lower authorities. In my view the authority denying the right of appeal on a technical plea of

limitation in a case like the present one is not just and proper.

5. In the case of Collector, Land Acquisition, Anantnag Vs. Katiji, reported in AIR 1987 SC 1353 it is held that refusing to condone delay can result in

a meritorious matter being thrown out at the very threshold and cause of justice

being defeated. Under the circumstances, the respondent authority ought to have condoned the delay and considered the appeal on merits.â??

[7] After the aforesaid order of this Court, the authorities reconsidered the case of the petitioner and the Collector had rejected the application on two

grounds. Firstly, that the petitioner company cannot be treated as Union of India and therefore, refund cannot be effected. The other ground being that

the facts of the case would not attract Section 44(2) of the Act. The controlling authority while examining the order of the Collector came to the

conclusion that the first ground is not germane and therefore, discarded such finding by the Collector. However, the controlling authority proceeded to

upheld the ground of rejection to be beyond the purview of Section 44 of the Act as there is no exercise under Section 32, 34 or 39 of the Act. The

stand of the controlling authority appears to be not in consonance with the Act which provides for an opinion of the Chief Controlling Revenue

Authority, Stamp Duty with regards to the excess being charged and paid under Section 32, 34 or 39 of the Act. In the opinion of the Court, once the

Chief Controlling Revenue Authority is convinced about the fact of over payment towards the stamp duty, the stamp duty which would obviously be

paid only under the provisions of the Stamp Duty Act which includes Section 32 of the Act. In the facts of this case, the exercise undertaken by the

petitioner company under Section 32(A) of the Act had clearly opined about the excess stamp duty paid on the valuation and the payment in this

connection would obviously be under Section 32 of the Act. Therefore, in the opinion of this Court, in the facts of the case the Controlling Authority

was not correct in holding that the proceedings of refund of stamp duty cannot be undertaken in view of the stamp duty not being paid under Section

32 of the Act. In absence of any other provision, the Court is of the view that retaining of the additional stamp duty cannot be justified and hence, this

Court has held in Shamjibhai Ranchhodbhai Dabhi (Supra) as under:-

â??15. Having heard the learned Advocates appearing for the parties and having considered the rival submissions, the Court is of the view that there

is no dispute about the fact that a mistake was committed in mentioning the exact area of the land, which was 15,884 sq. meters as against it was

mentioned as 63,536 sq. meters and accordingly on this area of land, the petitioner has paid the stamp duty of Rs.25,19,886/= + Rs.2,02,000/=. Thus in

all Rs.27,21,886/= were paid by the petitioner. In fact the petitioner is required to pay stamp duty of Rs.8,00,554/=. Thus the petitioner is entitled to the refund of excess stamp duty paid. The petitioner's claim is objected only on the ground that the application was not made in time and that the said deficit stamp duty was paid under Section 32A of the Act. However, the respondent being a State Authority cannot retain any amount paid in excess under some genuine or bonafide mistake. Equity demands that if the petitioner is not liable to pay the stamp duty and still it is paid, the same is required to be refunded. There is no justification on part of the respondent authority in denying the claim of refund of excess stamp duty. However the Court looking to the issue involved and equity in the matter, tilts the balance in favour of the petitioner and holds that the petitioner is entitled to refund of the excess stamp duty paid under genuine or bonafide mistake.â??

[8] This Court also may also draw support from the judgment of the Apex Court in the case of Committee-GIFL v/s. Libra Buildtech Private Limited

and others, reported in (2015) 16 SCC 31, where the Apex Court dealing with the issue of stamp duty has held as under:-

â??21.The question which arises for consideration in this case is whether the applicants are entitled to claim refund of stamp duty amount of Rs.6.22 crores.

Xxxxxxxxxxxxx

24. In our considered opinion, keeping in view the undisputed facts mentioned above, the applicants are also entitled to claim the refund of entire stamp duty amount of Rs.6.22 crores from the State Exchequer, which they spent for execution of sale deeds in their favour in relation to the properties in question. This we say for the following reasons.

25. In the first place, admittedly the transaction originally intended between the parties, i.e., sale of properties in question by GFIL-Committee to the

applicants was not accomplished and failed due to reasons beyond the control of the parties. Secondly, this Court after taking into consideration all

facts and circumstances also came to the conclusion that it was not possible for the parties to conclude the transactions originally intended and while

cancelling the same directed the seller (GFIL -Committee) to refund the entire sale consideration to the applicants and simultaneously permitted the

applicants to claim refund of stamp duty amount from the State Government by

order dated 26.09.2012. Thirdly, as a result of the order of this Court, a right to claim refund of amount paid towards the stamp duty accrued to the applicants. Fourthly, this being a court monitored transaction, no party was in a position to take any steps in the matter without the permission of the Court. Fifthly, the applicants throughout performed their part of the contract and ensured that transaction in question is accomplished as was originally intended but for the reasons to which they were not responsible, the transaction could not be accomplished. Lastly, the applicants in law were entitled to claim restoration of all such benefits/advantages from the State once the transaction was cancelled by this Court on 26.09.2012 in the light of the principle contained in Section 65 of the Contract Act which enable the party to a contract to seek restoration of all such advantage from other party which they took from such contract when the contract is discovered to be void or becomes void. This was a case where contract in question became void as a result of its cancellation by order of this Court dated 26.09.2012 which entitled the applicants to seek restitution of the money paid to the State for purchase of stamp papers.

26. In our considered opinion, while deciding a case of this nature, we have to also bear in mind one maxim of equity, which is well settled namely

actus curiae neminem gravabit "" meaning - An Act of the Court shall prejudice no man. In Broom's Legal Maxims 10th edition, 1939 at page 73

this maxim is explained saying that it is founded upon justice and good sense and afforded a safe and certain guide for the administration of law. This

maxim is also explained in the same words in Jenk. Cent.118. This principle is fundamental to any system of justice and applies to our jurisprudence.

[See: Busching Schmitz Pvt. Ltd. vs. P.T. Menghani & Anr. And Raj Kumar Dey s. Tarapada Dey]

27. It is thus a settled principle of law based on the principle of equity that a person cannot be penalized for no fault of his and the act of the court would cause no prejudice to any of his rights.

28. In our considered opinion, the aforesaid maxim would apply with full vigour in the facts of this case and if that is the position then applicants, in our

opinion, are entitled to claim the refund of entire amount of stamp duty from the State Government which they spent in purchasing the stamp duty for

execution of sale deed in relation to the properties in question. Indeed in the

light of six reasons set out supra which, in our considered opinion, in clear terms attracts the principle contained in the aforesaid maxim, the State has no right to defend the order of SDM for retaining the amount of stamp duty paid by the applicants with them. The applicantsâ?? bona fide genuine claim of refund cannot be denied on such technical grounds.

Xxxxxxx

32. In our considered opinion, even if we find that applications for claiming refund of stamp duty amount were rightly dismissed by the SDM on the ground of limitation prescribed under Section 50 of the Act yet keeping in view the settled principle of law that the expiry of period of limitation prescribed under any law may bar the remedy but not the right, the applicants are still held entitled to claim the refund of stamp duty amount on the basis of the grounds mentioned above. In other words, notwithstanding dismissal of the applications on the ground of limitation, we are of the view that the applicants are entitled to claim the refund of stamp duty amount from the State in the light of the grounds mentioned above.â??

[9] In view of the aforesaid, the State Authority has no power to retain excess amount paid under the circumstances which were not in control of the petitioner.

[10] In view of the aforesaid, the present petition is hereby allowed. The impugned order dated 28.06.2004 passed by the respondent No.3-Collector and Deputy Assistant, Superintendent of Stamps, Gandhinagar and order dated 29.12.2015 passed by the respondent No.2-Chief Controlling Revenue Authority, Gujarat State, Gandhinagar are quashed and set aside. The petitioner shall be entitled to receive refund of the excess payment of

Rs.1,74,600/-. The amount be refunded within a period of four weeks from the date of receipt of copy of this order. Direct service is permitted.