
(2019) 11 BOM CK 0072
In the Bombay High Court
Case No : Writ Petition No. 10600 Of 2018

Hindustan Unilever Ltd

APPELLANT

Vs

State Of Maharashtra And Anr

RESPONDENT

Date of Decision : 26-11-2019

Acts Referred:

Maharashtra Stamp Act, 1958 — Section 31, 31(1), 31(2), 31(4), 32, 32(1), 32(1)(a), 32(1)(b), 32(2), 32(3), 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 53, 53A

Indian Stamp Act, 1899 — Section 33

Constitution Of India, 1950 — Article 25(da), 226

Citation : (2019) 11 BOM CK 0072

Hon'ble Judges : Anuja Prabhudessai, J

Bench : Single Bench

Advocate : Virag Tulzapurkar, Birendra Saraf, Jyoti Sinha, C. Nageshwaran, Sraddha Kedia, Sachin H. Kankal

Final Decision : Allowed

Judgement

1. Rule. With consent, rule made returnable forthwith.

2. In this Writ Petition, filed under Article 226 of the Constitution of India, the petitioner has sought the following reliefs :-

" (a) That this Hon'ble Court be pleased to issue a writ of certiorari or any other appropriate writ order or direction calling for the records and proceedings relating to the impugned order dated 25th January 2018 (Ex O hereto) read with the Interim demand letter dated 7th April 2016 (Ex M hereto) and after examining the validity legality and propriety thereof, be pleased to quash and set aside the same.

(b) That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ order or direction declaring / directing :-

(i) that vide letter dated 19th March 1997, the adjudication of stamp duty on the

order of amalgamation is complete, valid and binding under Section 31 of the Act.

(ii) that apart from amount of Rs.23,25,66,519/-already paid by the Petitioner pursuant to the demand letter dated 19th March 1997, no further stamp duty is payable on the order of amalgamation;

and;

(iii) the Respondent No.1 and its subordinates to forthwith withdraw and cancel the Impugned Order as well as the demand for the stamp duty of the amount specified in the said Impugned Order;

(c) That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ order or direction directing the Respondent No.2 to issue a certificate of endorsement on the order of amalgamation under Section 32 of the Act, in pursuance of the adjudication done on 19th March 1997 under Section 31 of the Act; and handover the duly endorsed instrument to the Petitioner. "

3. The relevant facts necessary to decide this petition are as under: A scheme of amalgamation of Brooke Bond Lipton India Limited as a Transferor Company (BBLIL) with the Petitioner- Hindustan Unilever Limited as a Transferee Company (HUL) was sanctioned by this Court vide order dated 23rd August, 1996 in Company Petition No.343 of 1996.

4. Since the Transferor Company-(BBLIL) has its registered office at Calcutta, a separate Company Petition was filed before the Hon'ble High Court at Calcutta and the same was allowed by order dated 09/12/1996. By the said order, it was held that the properties of the Transferor Company listed in Schedule B of the scheme viz. (i) freehold properties, (ii) leasehold properties and (iii) all shares, debentures and other charges would be transferred and vested in the Transferee Company-(HUL) from the date of transfer.

5. By letter dated 19th March, 1997, the Petitioner Company (HUL) submitted orders of amalgamation dated 23/08/1997 and 13/03/1997 before the Respondent no.2 - the Collector of Stamps, Mumbai for adjudication as to proper stamp duty under section 31 of the Maharashtra Stamp Act, 1958 (herein after referred to as the Stamp Act). Relying upon the notification dated 18th March, 1997, the petitioner stated that the value of the shares which were to be allotted to the shareholders of BBLIL under the scheme was Rs.3322,37,88,448/- and as such the duty payable there on at 0.7% worked out to Rs.23,25,66,519/-. The petitioner claimed that valuation of the immovable properties of the BBLIL was substantially lower than the value of the shares and as such the stamp duty was payable only on the market value of the shares to be issued and allotted under the scheme. The Petitioner-Company submitted a certificate from the Chartered Accountant and certificate issued by the BSE confirming the market price of the shares.

6. The petitioner claims that the Competent Authority under the Act duly adjudicated proper and correct stamp duty payable on the said instrument i.e.,

the amalgamation order. By letter dated 19th March, 1997, the office of the Respondent No.2 informed the petitioner that an amount of Rs.23,25,66,519/- was payable towards stamp duty on the order sanctioning the scheme of amalgamation and issued a demand upon the Petitioner-Company to make payment of the said amount. It was stated that the certificate of endorsement under section 32 of the Stamp Act would be issued on payment of the said amount. Accordingly the Petitioner company made payment of Rs. 23,25,66,519/ towards the stamp duty.

7. By letter dated 25th October, 2001 and several other subsequent letters/ notices, the office of the Respondent No.2 called upon the petitioner to attend the hearing and submit information of total number of shares and documents/ description of immovable properties of the transferor company located in Maharashtra for the purpose of adjudication of the stamp duty on the said order of amalgamation. The petitioner maintained that the stamp duty had already been adjudicated and was duly paid. Despite the response, the Respondent No.2 issued an interim demand letter dated 7th April, 2016 inter alia stating that as per adjudication under Article 25 (da) of Schedule-1, an amount of Rs.338,31,67,694/- was adjudicated towards stamp duty. Since an amount of Rs.23,25,66,519/- was already paid, the petitioner was called upon to pay the balance stamp duty of Rs.315,06,01,175/-and a fine of Rs.54,13,06,831/-. Rejecting the contention of the petitioner that the stamp duty was already adjudicated and paid, the respondent no.2 passed an order dated 25th January, 2018 inter alia demanding payment of unpaid duty amounting to Rs.312,49,55,606/-and penalty of Rs.47,00,53,098/-. Aggrieved by the interim demand and the impugned order dated 25th January, 2018, the petitioner has invoked the Writ Jurisdiction of this Court.

8. Mr. Virag Tulzapurkar, the learned Senior Counsel representing the petitioner contends that the stamp duty payable on the order of amalgamation was already adjudicated vide letter dated 19th March, 1997. He submits that since the adjudication process was concluded and the stamp duty was paid, the Stamp Authority was functus officio and had no jurisdiction to re-open the adjudication. He has relied upon the decision of the Apex Court in the Government of Uttar Pradesh and ors. v/s. Raja Mohammad Amir Ahmad Khan [AIR 1961 SC 787] and the decision of the Division Bench of this Court in Nirmala Manherlal Shah v/s. State of Maharashtra and ors. [2005 (5) BomCR 206].

9. The learned Senior counsel for the petitioner contends that the petitioner having made the full payment, it was incumbent upon the Respondent to issue certificate of endorsement under section 32, which is otherwise a ministerial act. He submits that the Petitioner cannot be made to suffer due to non-compliance of statutory obligation by the Respondent. The learned counsel for Petitioner submits that, as on the date of presentation of the application, the Collector had no jurisdiction to demand payment of stamp duty determined by him. Relying upon the decision of the Apex Court in Whirlpool Corporation v/s. Registrar of

Trade Marks, Mumbai and ors. [AIR 1999 SC 22] he submits that the interim demand and the impugned order being wholly without jurisdiction, writ petition is maintainable despite alternative remedy. Reliance is placed on the decision of the Apex Court in Har Devi Asnani v/s. State of Rajasthan and ors. (2011) 14 SCC 160, to substantiate his contention that it is always open to a party to file a writ petition to challenge the exorbitant and arbitrary demand. He submits that apart from the demand being arbitrary and without jurisdiction, the same was made after a lapse of 19 years. The unreasonable delay in making such demand is also one of the grounds for exercising the writ jurisdiction.

10. The learned AGP Mr.Kankal disputes that the Competent Authority under the Act had adjudicated the stamp duty payable on the instrument. The learned AGP submits that on the date of filing the application i.e. 19/03/1997, the petitioner on its own motion issued a demand draft for Rs.23,25,66,519/- towards stamp duty. He contends that it was not possible to scrutinize and adjudicate the application within a period of one day. Hence, the demand draft submitted by the petitioner along with the application was accepted subject to final adjudication. He contends that the letter dated 19th March, 1997 along with receipt no.49 was issued only for the sake of convenience and office record. He submits that no endorsement was made or certificate was issued under Section 32 of the Maharashtra Stamp Act.

11. The learned AGP contends that total 127 properties have been transferred and since the details had to be verified, letters were issued to the petitioner within a reasonable time to remain present. He submits that the petitioner had neither furnished the list of properties nor given particulars of the properties despite several opportunities given to submit the requisite documents and/or to provide detailed information. He submits that the valuation is based on the ready reckoner and the rates approved by the Government. He contends that the petitioner is liable to deposit the stamp duty as per the final order.

12. The controversy centers in this petition around the question whether the stamp duty was already adjudicated under Section 31(1) of the Maharashtra Stamp Act, as per the letter dated 19th March, 1997. Before advertng to the contentions raised by the respective parties it will be advantageous to consider the provisions under Sections 31 and 32 of the Maharashtra Stamp Act which read thus:-

"Section 31. Adjudication as to proper stamps

(1) When an instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, by one of the parties to the instrument and such person applies to have the opinion of that officer as to the duty (if any) with which or the Article of Schedule I under which it is chargeable and pay a fee of one hundred rupees the Collector shall determine the duty (if any) with which or the Article of Schedule I under which in his judgment, the instrument is chargeable.

(2) For this purpose the Collector may require to be furnished with a true copy or an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein and may refuse to proceed upon any such application until such true copy or abstract and evidence have been furnished accordingly.

..."

32. Certificate by Collector

(1) When an instrument brought to the Collector under section 31, is in his opinion, one of a description chargeable with duty, and-

(a) the Collector determines that it is already fully stamped, or

(b) the duty determined by the Collector under section 31, or such sum as with the duty already paid in respect of the instrument, is equal to the duty, so determined has been paid, the Collector shall certify by endorsement on such instrument that the full duty (stating the relevant Article of Schedule I and the amount) with which it is chargeable has been paid.

2. When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

3. Subject to the provisions of section 53-A, any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped:

Provided that nothing in this section shall authorize the Collector to endorse-

(a) and instrument executed or first executed in the State and brought to him after the expiration of one month from the date of its execution or first execution as the case may be;

(b) any instrument executed or first executed out of the State and brought to him after expiration of three months after it has been first received in this State; or

(c) any instrument chargeable with the duty of twenty naye paise or less when brought to him, after the drawing or execution thereof, on paper not duly stamped. "

13. A plain reading of Section 31 would indicate that it enables a person to voluntarily obtain an opinion of the Collector as regards the duty payable on an instrument, which is executed or not and whether previously stamped or not. Sub-section 2 of Section 31 confers powers on the Collector to call for an

abstract of the instrument, or require an affidavit or other evidence in order to arrive at such a decision. It is also to be noted that the adjudication order contemplated by Section 31 is capable of being challenged under Section 53 of the Act. It is thus evident that the adjudication under section 31 is not merely an administrative or ministerial act but is a quasi-judicial proceeding. It therefore follows that the Collector exercising powers under the Act, is bound to act judicially in determining the duty payable on an instrument.

14. Section 32, which comes into operation post adjudication under section 31, authorizes the Collector to certify by endorsement on the instrument that the instrument is duly stamped or that the duty has been fully paid or that the instrument is not so chargeable, as the case may be. Sub-section 3 of section 32 creates a legal fiction that the instrument upon which an endorsement has been made shall be deemed to be duly stamped or not chargeable with duty as the case may be. Subject to the revisional powers under Section 53 A, such instrument shall be received in evidence, and acted upon and registered as if it had been originally stamped.

15. It has to be borne in mind that the object of the Stamp Act is not only to collect revenue but also to prevent evasion of revenue. The object and purport of the Act as well as the scope of Section 31 and 32 and particularly the deeming provision under Sub Section 3 of Section 32 would rule against arbitrary or mechanical exercise of power. This would mean that the Collector exercising powers under sub section 1 and 2 of section 32 of the Stamp Act is under an obligation to adopt a judicial approach.

16. In the instant case it is not in dispute that the petitioner submitted amalgamation orders along with an application dated 19th March, 1997 before the Respondent no.2 for adjudication of stamp duty under section 31 of the Stamp Act. On the same date the Respondent No.2 had issued a letter wherein it was stated that the document submitted for adjudication will have to be affixed with stamp duty of Rs.23,35,66,519 as per the Articles of Schedule-I of the Bombay Stamps Act, 1958. It was further submitted that after affixing the same stamp duty of Rs. 23,35,66,519/-, the document would be certified as per the provision under Section 32 of the Act. Relying upon the letter dated 19/3/1997, the Petitioner contends that the Respondent No.2 had already adjudicated the stamp duty and was therefore had no jurisdiction to re-adjudicate the duty or demand payment of duty.

17. It is therefore necessary to consider whether the letter dated 19/3/1997 can be construed as an adjudication under Section 31(1) of the Act. In this regard it would be relevant to refer to the affidavit-in-reply as well as additional affidavit-in-reply filed by Ajit Sakhare, Collector of Stamps (Enforcement -I). He has stated that the Petitioner had submitted the application dated 19/3/1997 at inward counter. The inward clerk noticed that the Applicant had enclosed a Banker's cheque for Rs.23,35,66,519/- towards the stamp duty payable under the instrument. The inward clerk placed the application and the cheque before

the Deputy Superintendent. It is stated that the Deputy Superintendent had issued the letter dated 19/3/1997 to enable the inward clerk to accept the cheque and issue a receipt. The Collector states that the said letter, which was issued for the sake of convenience and office record, cannot be treated or read as an adjudication order.

18. The letter dated 19/3/1997, copy of which is placed on record at page 187 indicates that it is a printed proforma with much of the contents scored out. This letter, on the face of it, cannot be considered as a decision under Section 31(1) of the Act. It is also to be noted that the Deputy Superintendent, who had issued the letter dated 19/3/1997 had scrutinized the application on 17/4/1997 and prepared a note/submissions, wherein he had noted that as per the notification dated 18/3/1997 the stamp duty is payable @ 7% of the true market value of the immovable property of the transferor company located within the State of Maharashtra or 0.7 % of the value of shares issued or allotted in exchange or otherwise and the amount consideration paid for such amalgamation, whichever is higher. The Deputy Superintendent had listed 127 properties of the transferor company located within the State of Maharashtra and had submitted that the Petitioner had not given valuation report of these properties. The said submissions/note was placed before the Collector of Stamps cum Superintendent of Stamps for approval. The Collector-cum-Superintendent having gone through the said submissions/note, issued instructions to call for the valuation report in respect of the said 127 immovable properties.

19. Mr. Ajit Sakhare, Collector of Stamps (Enforcement -I) has stated that vide letters dated 16/5/1997 and 1/4/1998 the Petitioner was called upon to provide the details of the said immovable properties. The petitioner has denied having received these letters, however, the same may not be relevant as the records indicate that despite the letter dated 19/3/1997, the Deputy Superintendent had scrutinized the application and the Collector had made an endorsement on the submissions/note to call for the valuation report of the immovable properties. There is also further correspondence between the parties from 25/10/2001 in respect of the same issue. The fact that despite the letter dated 19/3/1997, the office of the Respondent No.2 had scrutinized the application and called for further details in respect of the immovable properties necessary to determine or prove the amount of the duty with which the instrument was chargeable, would per se indicate that the Respondent no.2 had neither considered the letter dated 19/3/1997 as adjudication order nor treated the application dated 19/3/1997, which was registered as ADJ. No. 4591/96 as closed or finally adjudicated.

20. It is to be noted that under the order of amalgamation, the properties viz. (i) freehold properties, (ii) leasehold properties, and (iii) all shares, debentures and other charges of the BBLIL Company were to be transferred to the petitioner company. In the application, dated 19/3/1997 the Petitioner had claimed that as per the notification dated 18/3/1997 it was liable to pay 0.7% of the value of the share issued or allotted in exchange or otherwise upon amalgamation. It was

alleged that as on the date of the amalgamation of the Company, the consideration for issue of shares was Rs.3322,37,88,448/- crore and hence it is liable to pay the stamp duty of Rs.23,25,66,519/-. The Petitioner had further claimed that in terms of the notification, it would have been liable to pay a higher stamp duty if the value of the immovable property was to exceed Rs.332 crores. The Petitioner had stated that since the value of the immovable property of the transferee company was below 332 crores, the stamp duty was to be adjudicated only on the basis of the market value of the shares. Based on the certificate issued by its Chartered Accountant, the petitioner computed the stamp duty payable on the shares as Rs.23,25,66,519/- and enclosed a Bankers cheque for the said amount along with the application.

21. It is to be noted that in the application dated 19.3.1997, the petitioner had not given valuation of the properties transferred under the amalgamation order. There was thus no material before the Collector or the Dy. Supdt. to indicate that the value of the said properties was less than the value of the shares and that the duty was payable only on the value of the shares. It is also not in dispute that the Dy. Supdt. had not exercised powers conferred under Sub Section 2 of Section 31 of the Act to adjudicate proper stamp duty. Apparently the Dy. Supdt. had not independently assessed the quantum of stamp duty payable on the instrument, but had merely endorsed the valuation of the shares and the stamp duty computed by the petitioner. Suffice it to say endorsing the assertion of the Petitioner without application of mind is not adjudication under Section 31 of the Act. Hence, the letter dated 19/03/1997 cannot be termed as adjudication under Section 31 of the Act. The above facts and circumstances lead to the only conclusion that there was no adjudication of stamp duty as contemplated under Section 31 of the Maharashtra Stamp Act.

22. A perusal of the application as well as the prayers sought in this petition would indicate that the Petitioner has also sought certification under Section 32 of the Act, which is an independent provision. The Collector exercising powers under Section 32 of the Act is under a statutory obligation to determine whether the conditions specified in clauses (a) and (b) of Sub Section 1 of Section 32 are fulfilled. It is only on such satisfaction that the Collector would be bound to certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid. Sub section 3 of Section 32, raises a legal fiction that an instrument with certificate by endorsement "shall be deemed to be duly stamped" and shall be receiv-able in evidence and may be acted upon and registered as if it had been originally duly stamped. Hence, certification under section 32 is not a mere formality or a ministerial act as alleged by the petitioner but is a quasi judicial function which requires application of mind and decision. In the instant case, undisputedly, alleged adjudication under section 31 was not followed by an endorsement as envisaged under section 32(1) to the effect that the instrument was duly stamped or that the duty as adjudicated has been fully paid. This fact in my considered view further fortifies the contention that there was no adjudication of stamp duty.

23. It may be noted that the Stamp Act does not stipulate any period of limitation for deciding application under Section 31 of the Stamps Act. Yet, the Authority exercising quasi-judicial powers is under an obligation to decide such applications within a reasonable time. In the instant case, the application was filed in the year 1997 and the letters raising interim and final demand were issued in the year 2016 and 2018 respectively. Though at the first blush it appears that the Authorities have acted after inordinate delay, records indicate that the application under Section 31 was scrutinized within one month from the date of its receipt. Mr. Ajit Sakhare, Collector of Stamps (Enforcement -I) has stated in his affidavit that notices were issued in 16/5/1997 and 1/4/1998 calling upon the Petitioner to furnish valuation report of the properties for the purpose of determining the stamp duty payable on the instrument. It is also not in dispute that since the year 2001 the Respondent No.2 had been issuing several notices calling upon the Petitioner to submit the required documents relating to the market value of the properties. Mr. Ajit Sakhare, (Collector of Stamps) has referred to these notices in his affidavit and has stated that despite repeated request for time to furnish the details of the immovable properties, situated in the State of Maharashtra, the Petitioner had failed to submit the valuation report, which was essential for determining the stamp duty. In the above facts and circumstances, the delay, though inordinate, is not solely attributable to the Respondent No.2.

24. Now coming to the question of jurisdiction, by letter dated 7th April, 2016 the Petitioner was informed that as per the adjudication the stamp value of Rs.3150601175/- and fine of Rs.541306831/- was payable. The Petitioner was called upon to pay the stamp duty and fine within 60 days of the receipt of the order and in case the interim demand was not acceptable, the Petitioner was called upon to file its reply within 30 days. The Petitioner did not accept the valuation. By the impugned order, the Respondent No.2 held that as per Article 25(da) the Petitioner was liable to pay an amount of Rs.3,12,49,55,606/- as stamp duty. The Respondent No.2 has recorded that the Petitioner has not submitted the documents within one month from the date of the amalgamation order and hence it was liable to pay Rs.470053098/- as penalty. The Petitioner was directed to deposit the stamp duty and penalty within 30 days from the date of the impugned order. Failing which the Petitioner was held liable to penalty @ 2% till payment of the stamp duty. Relying upon the decision of the Apex Court in Raja Mohd. Amir Ahmad (supra), it is contended that the Respondent No.2 has no jurisdiction to pass the impugned order.

25. In Raja Mohd. Amir Ahmad Khan (supra) a stamped document, recording the terms of an oral Wakf, was presented to the Collector for his opinion under Section 31 as to the duty chargeable on the said instrument. The Collector had determined the stamp duty payable on the instrument and had proceeded to demand the payment of the duty. On failure to pay the duty, the Collector in exercise of powers under Section 33 of the Act impounded the document. In the writ petition filed by the respondent/ executant, challenging the legality of the

imposition of the stamp duty and the penalty, the High Court held that the Collector acting under Section 31 had no jurisdiction to impound the instrument under Section 33 and accordingly quashed the order of the Collector. In an appeal by the State Government, the Apex Court, while affirming the decision of the High Court held that the instrument was not produced as a piece of evidence nor for endorsement as per section 32 of the Stamp Act but was merely brought before the Collector for seeking his advice as to what the proper duty would be.

The Apex Court has observed that when an opinion of the Collector is sought under Section 31 he has to determine the duty, which in his judgment, the instrument is chargeable, and there his duties and power in regard to that matter end. In paragraph 8 of the judgment the Apex Court has observed thus:-

8. Chapter IV of the Act which deals with instruments not duly stamped and which contains sections 33 to 48, provides for impounding of documents, how the impounded documents are to be dealt with, Collector's powers to stamp instruments impounded and how the duties and penalties are to be recovered. It would be an extraordinary position if a person seeking the advice of the Collector and not wanting to rely upon an instrument as evidence of any fact to be proved nor wanting to do any further act in regard to the instrument so as to effectuate its operation should also be liable to the penalties which unstamped instruments used as above might involve. The scheme of the Act shows that where a person is simply seeking the opinion of the Collector as to the proper duty in regard to an instrument, he approaches him under section 31. If it is properly stamped and the person executing the document wants to proceed with effectuating the document or using it for the purposes of evidence, he is to make up the duty and under s. 32 the Collector will then make an endorsement and the instrument will be treated as if it was duly stamped from the very beginning. But if he does not want to proceed any further than seeking the determination of the duty payable then no consequence will follow and an executed document is in the same position as an instrument which is unexecuted and unstamped and after the determination of the duty the Collector becomes *functus officio* and the provisions of Section 33 have no application. The provisions of that section are a subsequent stage when something more than mere asking of the opinion of the Collector is to be done.

26. Thus, the legal position as it stood prior to incorporation of Sub Section 4 of Section 31 of the Act, was that when an instrument is submitted under Section 31 only for an opinion, the Collector had to determine the duty payable on the instrument. He would become *functus officio* on giving the opinion and consequently would have no jurisdiction either to demand the duty or to impound the document.

27. In *Nirmala Manherilal Shah* (supra), following the decision of the Hon'ble Supreme Court in *Raja Mohd. Amir Ahmad Khan* (supra), the Division Bench of this Court has held that when an application is moved under Section 31, the jurisdiction of the Collector is limited to decide or determine the duty payable.

Once he does so, he becomes functus officio and in those cases he cannot apply provisions of Section 33 of the Stamp Act which is similar to Section 32 of the Bombay Stamp Act, which has the power to impound the instrument and demand the stamp duty and penalty.

28. In the instant case, the instrument was not only submitted for adjudication under Section 31 but the Petitioner had also prayed for certification under Section 32 of the Stamp Act. As stated earlier, section 32 comes into play after adjudication of stamp duty under section 31 and deals with certification of payment of full duty. Hence, the Collector who is also called upon to exercise powers under section 32, would not become functus officio on adjudication of the stamp duty under section 31 of the Act.

29. Be that as it may, the question is whether the Collector had jurisdiction to demand the stamp duty and penalty. It is pertinent to note that subsequent to the judgments in Raja Mohd. Amir Ahmad Khan (supra), sub-section 4 of Section 31 has been inserted. This sub-section which has come in force w.e.f 15.05.1997 authorizes the Collector to issue a notice for recovery of unpaid stamp duty on an instrument, which is the subject matter of adjudication under Section 31 of the Act and further to impose penalty on failure to pay the unpaid duty.

30. Undisputedly, the instrument was submitted for adjudication prior to insertion of sub section 4 to section 31, which had come in force w.e.f. 15/05/1997. The learned AGP concedes that the amendment relates to substantive law and will not have retrospective effect and consequently will not apply to the pending cases. In other words, the learned AGP concedes that in the instant case the Respondent No.2 could not have invoked provisions under Sub Section 4 of Section 31 to demand stamp duty or penalty. The learned AGP has not been able to point out any other provision that enabled the Respondent No.2 to demand unpaid stamp duty or to levy penalty on failure to pay the stamp duty. The fall out and consequence of conceding the above is that the notice for demand of stamp duty and penalty is without jurisdiction. Hence, in view of the principles laid down by the Apex Court in Whirlpool (supra), the writ petition would be maintainable despite availability of alternative remedy.

31. The records indicate that the Petitioner had not submitted the detailed information as required by the Collector for adjudicating the stamp duty on the premise that the stamp duty was already adjudicated. The Collector has assessed the stamp duty on the basis of ready reckoner rate, without taking recourse to sub-section 2 of section 31 of the Act. The interest of justice demands that the matter is remitted to the Collector for fresh adjudication of stamp duty in accordance with the procedure prescribed under the Act. Hence, the following order:-

32. The writ petition is allowed. The impugned notice/orders are quashed and set aside. The matter is remitted to the Respondent No.2 with direction to follow the due procedure and adjudicate afresh the stamp duty on the instrument

submitted by the petitioner after giving an opportunity to the Petitioner to produce the requisite evidence or to give details necessary to adjudicate the amount of the duty with which the instrument is chargeable. The Collector shall certify by endorsement on such instrument subject to satisfaction that the instrument is already fully stamped or the duty determined is fully paid. The Collector shall complete such exercise within a period of three months from the date of receipt of copy of this order. Rule made absolute in above terms.