(2011) 08 AHC CK 0087

In the Allahabad High Court

Case No : Writ Petition No''s. 2469, 2185, 2470, 2404, 2405, 2428, 2426, 2409, 2430 and 2427 (M/s.) of 2011

Reliance Infocomm Limited — APPELLANT

Vs

State of U.P. and others — RESPONDENT

Date of Decision : 29-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Section 2(16), 56
Stamp Duties Act — Article 35, 35(VI)

Citation : (2011) 114 RD 236

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Heard Learned Counsel for the petitioner and Sri. Sanjay Sarin, Standing Counsel.

2. The common issue involved in these writ petitions is whether the agreement entered into by the petitioner-company with the land owners for installation of telecommunication equipments for consideration of rent on their premises is a ''licence'' or ''lease'' and as such all these writ petitions are being decided by a common order.

3. The Deputy Commissioner of Stamp Act has held in the impugned order dated 28.2.2008 that since there was a clause in the agreement which provided that the lease could be renewed between the parties on mutually agreed terms and conditions, therefore, the lease could not be deemed to be for a fixed period as mentioned in the agreement but it would be rather for an indefinite period in view of the provision contained in explanation (2) to Article 35 of Schedule 1-B which provides inter-alia for a fixed period with a provision allowing the lessee to hold thereafter for an indefinite period, shall be deemed for the purpose of this article to be a lease. Therefore, the Stamp Duty is payable in accordance with

the provision of Article 35 (a) (VI) of Schedule I-B of Stamp Act.

4. Feeling aggrieved by the order dated 28.2.2008 of the opposite party No. 3, petitioner-company preferred an appeal u/s 56 of the Stamp Act before the Commissioner, who has upheld the order of the opposite party No. 3 by its order dated 24.3.2011 insofar as the application of provision of 35(a)(VI) of Article 35 of Schedule I-B is concerned, both the authorities held that clause pertaining to renewal in the agreement renders the lease to be a lease for an indefinite period and as such the petitioner is liable to pay stamp duty meant for indefinite period.

5. Not being satisfied with the aforesaid orders dated 28.2.2008 and 24.3.2011 passed by the opposite party Nos. 3 and 2 respectively, holding that since there is a renewal clause in the agreement, the lease would be deemed to be for an indefinite period liable to stamp duty as per provision contained in Article 35(a)(VI) of the Stamp Duty Act, has impugned the said orders on the ground that renewal clause in the lease agreement does not render the said lease to be for an indefinite period in view of decision of this Court in the Cases of G.S. Chaturvedi v. State of U.P. and others, 2007 (102) RD 574. Ashish Kumar v. Deputy Commissioner (Stamp) and others, 2010 (110) RD 822 (Alld.) and the lease remain for the period indicated in the lease agreement and chargeable to stamp duty as per corresponding provision of the Stamp Act.

6. With reference to Writ Petition Nos. 2469 (MS) of 2011, 2470 (MS) of 2011 and 2404 (MS) of 2011, it has been urged that there is no renewal clause in the lease agreement. Perusal of the lease deed annexed with the writ petition shows that they are fixed term lease agreement of 15 years.

7. It has been vehemently argued that the opposite parties Nos. 2 and 3 wrongly held that the stamp duty is payable as per Article 35(a)(vi) of Schedule 1-B. At the most, the said cases would fall in the ambit of Article 35 (a) (iv) of Schedule 1-B for the purposes of payment of Stamp Duty as would be evident from the lease agreement. Next, It has been contended that the opposite party No. 3-Deputy Commissioner of Stamps, while determining the liability of the petitioner to pay stamp duty in view of explanation to Article 35 of Schedule 1-B of Stamp Act has transgressed the specific provision as contained in the Explanation-2 inasmuch as it specifically covers only the ''holding over'' for indefinite period after the fixed term of lease and not the ''renewal'' of lease after its expiry.

8. Elaborating his contention, Counsel for the petitioners submitted that Stamp Act is a taxing statute. It must be construed strictly as has been held by the Hon''ble Supreme Court in case of Board of Revenue, Uttar Pradesh Vs. Rai Saheb Sidhnath Mehrotra, Hon''ble Supreme Court in the case of Commissioner of Sales Tax, Uttar Pradesh Vs. The Modi Sugar Mills Ltd., has held that the Court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed, it cannot import provision in the statutes so as to supply any assumed deficiency. The opposite party No. 3 while deciding that

the petitioner''s case is covered by the Explanation-2 of Article 35 of Schedule 1-B ignored the law laid down by the Apex Court in the aforesaid noted case.

9. State Counsel has argued that there is no infirmity or illegality in the orders impugned in the instant writ petitions. Petitioner-company has deliberately evaded the stamp duty though from the agreement it is quite clear that the said instrument falls under the definition of lease as provided u/s 2(16) of the Stamps Act. The case law relied upon by the petitioner is of no avail in the fact and circumstances of the present case.

10. The word ''lease'' for the purposes of the Stamp Act would mean ''lease'' as defined under the Stamp Act. A lease is chargeable to stamp duty under the provision of the Indian Stamp Act (hereinafter referred to as "the Act") in accordance with Article 35 of Schedule I-B of the Act. Article 35 of the of Schedule 1-B of the Act provides for stamp duty on the lease as under:

Schedule I-B

35. Lease, including an Under-lease or sub-lease and any agreement to let or sublet - (b) where the lease is granted for a fine or premium or for money advanced and where no rent is reserved.

(i) where the lease purports to be for a term not exceeding thirty years;

The same duty as a Conveyance [No. 23 clause (a)], for consideration equal to the amount or value of such fine or premium or advance as set forth in the lease.

(ii) where the lease purports to be for a term exceeding thirty years;

The same duty as a Conveyance [No. 23 clause (a)], for a consideration equal to the market value of the property which is subject of the lease.

35. Lease, including an under-lease or sub-lease and any agreement to let or subject

(a) where by such lease the rent is fixed and no premium is paid or delivered

(i) ...

(ii)...

(iii)...

(iv)...

(v) where the lease purports The same duty as a to be for a term exceeding Conveyance No. 23 twenty years but not clause (a), for a exceeding thirty years consideration equal to six times the amount or value of the average annual rent reserved.

(vi) where the lease purports The same duty as a to be for a term exceeding Conveyance No. 23 thirty years or in perpetuity clause (a), for a or does not purport to be consideration equal to for any definite term market value of the property which is the subject of the lease.

11. Under clause (v) on a lease which purports to be for a term exceeding twenty years but not exceeding thirty years stamp duty as a conveyance for a consideration equal to six times the amount or value of the average annual rent reserved is payable, whereas under clause (vi) where the lease purports to be for a term exceeding 30 years or in perpetuity the stamp duty as a conveyance equal to market value of the property which is subject of the lease is payable. From the agreement entered into between the parties and the contents thereof, it is imminently clear that the document is a lease which is renewable after expiry of the period indicated therein.

12. It may be added that in the aforesaid writ petitions, it is not in dispute that the petitioner company has entered into an agreement for taking place on lease on payment of rent for installation of equipments for telecommunication for 10-15 years. It is also not in dispute that the petitioner-company has entered into the agreement with the landowner simply on a Rs. 100/- stamp paper. The nature of the instrument executed by the petitioner was of lease as per the definition of section 2(16) of the Stamps Act. As per laws of registration, agreement of such nature is necessarily to be registered under the provisions of Registration Act, 1908. As the petitioner-company violated the statutory provisions, the competent authority i.e. Commissioner Stamps, Lucknow Division issued notice to the petitioner.

13. At this juncture, it would be relevant to point out that the first rule governing the application of stamp Act to the instrument is that duty is payable on the instrument and not on the transaction. The document itself as it stands is to be looked into and not by evidence or collateral circumstances are to be seen. Another rule for determining the stamp duty is the substance of the transaction as disclosed by the whole of the instrument and not merely the operative parts of the instrument. Mere use of the word ''license'', ''license fee'', etc in various clauses of the agreement would not necessarily mean that only a license has been granted. As a matter of fact, the deed is a ''lease'' within the meaning of section 2(16) of the Indian Stamp Act.

14. Having considered the submissions made by the rival parties and perused the material on record, I am of the considered opinion that the impugned orders are perfectly justified and are based on correct appreciation of evidence on record. As averred above, the petitioners have violated the law by not presenting the documents for registration though it has to be registered compulsorily and thus have intentionally evaded the stamp duty on the lease. Even otherwise, the impugned orders cannot be set-aside on the ground that the stamp duty on the lease could have been charged under Article 35(a)(iv) of Schedule 1-B instead of Article 35(a)(i) of Schedule 1-B as ordered by the authorities as setting-aside of these orders would mean revival of the illegal act of the petitioner.

15. In the agreement, the word ''demised'' has been used which means that the interest in the property has been transferred. Clause 3(a) of the agreement talks about the payment and provides that monthly rental is payable for occupancy and use of immovable property. Thus the payment has been prescribed as rent which is consideration for occupancy and use of the immovable property.

16. It may be added that it is not justifiable for this Court while exercising discretionary writ jurisdiction under Article 226 of the Constitution to reappraise the findings by merely stating that the findings of fact recorded by the authorities below were perverse. My above view is fortified with the decisions of the Apex Court in O.T.M.O.M. Meyyapa Chettiar v. O.T.M.S.M. Kasi Viswanathan Chettiar and another.

17. Lastly, It is relevant to point out that the issue, which is involved in the present writ petitions, has already been decided by this Court at Allahabad in Civil Misc. Writ Petition No. 18101 of 2009; Voda-fone Essar Mobile Services Ltd. v. State of U.P. and others decided on 28th July, 2011 and the assertions as advanced by the Counsel for the petitioner in the instant writ petitions have already been negated. I am in full agreement with the view expressed by this Court in the aforesaid case.

18. In view of the above, no good ground is made out to interfere with the impugned orders.

19. All the writ petitions being devoid of merit are hereby dismissed. No order as to costs.

