(2005) 08 BOM CK 0131

In the Bombay High Court

Case No : Writ Petition No. 2237 of 1993

Shriram Industries APPELLANT

Vs

State of Maharashtra and Others RESPONDENT

Date of Decision : 30-08-2005

Acts Referred:

Bombay Stamp Act, 1958 — Section 9
Constitution of India, 1950 — Article 226, 227

Citation : (2006) 1 ALLMR 180 : (2006) 2 BomCR 794

Hon'ble Judges : Dharmadhikari B.P., J

Bench : Single Bench

Advocate : C.S. Kaptan, for the Appellant; S.G. Loney, A.G.P. for respondent Nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Dharmadhikari B.P., J.—By this petition under Articles 226 and 227 of the Constitution of India, the petitioner an Industrial Unit challenges the notice dt. 12-7-1993 issued by the respondent No. 3 Sub-Registrar, calling upon the petitioner to pay the deficit amount of stamp duty and also registration fees. This Court has on 20-8-1993 issued Notice before admission and on 14-9-1993 Rule was made returnable early. However, this Court has not stayed the said notice. 2. Advocate Kaptan, who appears for petitioner invites attention of the Court to the notification dated 19-3-1990, by which the Government had remitted stamp duty in exercise of powers u/s 9(a) of the Bombay Stamp Act, 1958. He points out that if the loan is advanced for the purpose of purchasing fixed assets, such as machinery, lands and buildings, for the purpose of starting any new industrial unit or for extending or expanding and or diversifying any existing industrial unit, the said remission becomes applicable. He invites attention of the Court to the document of mortgage executed by the petitioner in favour of the Nagpur Nagarik Sahakari Bank, on 21-10-1999 to show that the said mortgage is executed for term loan of Rs. 4 lakhs. He also invites that attention of the Court to the recitals in the preamble of the said document to show that the term loan has been availed of for starting new industrial unit and for extending/ expanding it. He also invites attention of the Court to the Schedule appended at the end of the document to show that he has agreed for mortgage of present as also future construction which would be coming up in view of extension.

3. The learned AGP contends that the notification of exemption is not applicable in the case of petitioner, because the petitioner has not availed of the loan for extending or expanding business. He contends that the property has been mortgaged to arrange for working capital of Rs. 4 lakhs. He further contends that the remission granted in the said notification can be availed of only once and as the said remission was already availed of by the present petitioner he could not avail it again and demand of deficit stamp duty and Registration fees made by the respondent No. 3 is in accordance with the law,

4. Advocate Kaptan, in reply says that the show cause notice is very specific and the only contents thereof can be pointed in defence. He contends that the claim of the petitioner has not been negatived on the ground that he had already once availed the remission under the notification dated 12-7-1993,

5. After hearing the learned Counsel for the parties. I find that the notification of remission dated 19-3-1990 restricts its benefits only when the financial assistance availed of is for purchasing fixed assets such as machinery, land and building, or for the purpose of starting any new industrial unit or for extending or expanding and/or diversifying any industrial unit. It is not in dispute between the parties for if the petitioner avails loan for any of these purpose he could have been considered for remission in terms of the notification. The second argument advanced by learned A.G.P, is the benefit of remission may be availed only once is not supported by this notification. However, as this point is not taken in show cause notice dt. 12-7-1993, mentioned herein above and issued by the respondent No. 3. It is not necessary for this Court to dilute on this point.

6. When the document of mortgage deed is perused which is at Annexure 1 with the petition, it is apparent that the said document has been executed on 21-10-1991 and though in the preamble while giving history it has been mentioned that the financial assistance sought for was for the purpose of starting new industrial unit or for extending or expanding the said unit. In the body of document-there is no such mention. On the contrary-in the very opening para the figure of total financial assistance of Rs. 6.85 appears and the learned Counsel for the petitioner has clarified that the mortgage deed has been executed for Rs. 4 lakhs as mentioned in the document. He states that in relation to balance of Rs. 2.85 lakhs, a hypothecation deed has been independently executed.

7. Perusal of the said paragraph further reveals that the amount of Rs. 4 lakhs has been sanctioned to the petitioner establishment as working capital against the stocks and goods. In para immediately following thereafter, it is further mentioned that against the said term loan of Rs. 4 lakhs, which is extended

against the land and building, mortgager has created charge of Rs. 4 lakhs on the said land and building as collateral security. It is thus more than apparent that there is only one loan of Rs. 4 lakhs and the said amount of Rs. 4 lakhs has been advanced as working capital. In this respect it is to be noted that in the show cause notice which was served upon the petitioner the authorities has expressly pointed out that there is a less payment of stamp duty, therefore, deficit amount along with the find and registration fees are demanded. The petitioner has not filed any document with the petition to show that he has utilised the said amount of Rs. 4 lakhs only for expansion or extension of the industrial unit. In absence of such material it is apparent that the amount of Rs. 4 lakhs was only towards working capital. It is also clear that the mortgage created was as a collateral security.

8. Thus the specifications laid down by the notification of remission dated 19-3-1990 are not satisfied. In the facts of the present case the authority issuing notice dt. 12-7-1993 is therefore justified in demanding the amount as mentioned therein. No case is made out for interference in writ jurisdiction. Writ petition fails and is dismissed. No costs.