(2013) 07 P&H CK 0482

In the Punjab And Haryana At Chandigarh

Case No : CR No. 854 of 1999

The Primary Cooperative Agricultural Development Bank Limited	APPELLANT
Vs	
State of Punjab and Another	RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:
Stamp Act, 1899 — Section 38, 9

Citation : (2013) 172 PLR 53

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : P.S. Bajwa, DAG, Punjab, for the Respondent

Final Decision : Allowed

Judgement

K. Kannan, J.—The civil revision is against the order of the District Judge which is an appellate authority for disposal of appeal against the order seeking for levy of additional stamp duty u/s 47A of the Indian Stamp Act. The proceeding was a notice issued by the Collector on 5.7.1994 to a document which was registered at the office of Sub-Registrar, Bhatinda on 28.4.1992. The petitioner obtained full exemption from stamp duty and the notice was to the effect that the stamp duty had not been collected and for seeking collection of such duty of Rs. 2,49,000/-. The petitioner had objected to the issue of notice on referral grounds and on being served with an adverse order has approached this Court with same objections. The contentions are:

(i) power to issue a notice and to reopen the proceedings vested with the Collector u/s 47-A Clause (iii) and that power must be exercised within a period of two years from the date of registration of the instrument. The notice issued beyond the period of two years was incompetent and without jurisdiction

(ii) The document which was tendered for registration was in favour of a Cooperative Society which had obtained remission of liability to pay stamp duty in terms of notification issued by the Government under the Indian Stamp Act on 15.7.948 and the exemption which was issued was through a notification that was empowered u/s 38 of the Indian Stamp Act. The levy of duty was therefore also not competent in terms of the annual notification.

The District Judge had rejected both these contentions and revision is against the order.

2. There is no representation for the revision-petitioner. Since the matter is identified as amongst the oldest cases on file in the civil revision jurisdiction, I proceed to examine the records with the assistance of the counsel appearing on behalf of the State and proceeded to pass this order on merits.

3. As regards the contention that the initiation of proceedings by the Collector itself was beyond limitation, the counsel points that although the notice had been issued had been on 5.7.1994, it refers to the document of sale as having been executed on 28.4.1992, but the actual date of registration was only on 24.8.1992. This mistake has been pointed out by the Collector (stamps) in its first order copy of which has been filed as Annexure P-1. I hold that the document was only registered on 24.8.1992 and therefore the proceedings initiated by the Collector fell within time.

4. As regards the remission of stamp duty, Section 38 of the Stamp Act exempts from taxes fees and duties certain classes of properties and certain persons that include Cooperative Societies Section 38 clause 2 reads thus:

38. Exemption from certain taxes, fees and duties:-

(1)...

(2) The Government may, by notification, remit in respect of any class of co-operative societies:-

(a) the stamp duty chargeable under any law for the time being in force in respect of any instrument executed by or on behalf of a cooperative society or by an officer or member thereof and relating to the business of such society, or any class of such instruments or in respect of any award or order made under this Act, in cases, where, but for such remission the co-operative society, officer or member, as the case may be would be liable to pay such stamp duty;

(b) any fee payable under any law for the time being in force relating to the registration of documents or court fees.

Explanation:- In this subsection ''Government'' means in relation to stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts, the Central Government and save as aforesaid, the Government.

(3)....

5. If any Cooperative Society seeks for exemption, it has to justify an exclusion

only through a notification. The petitioner refers to the notification as having been issued u/s 38 on 15.7.1948. The text of the notification is reproduced

Stamps

the 15th July, 1948.

No. 3088-E & T-In exercise of the powers conferred by Clause (a) of Section 9 of the Indian Stamp Act, 1899 (II of 1899). the Governor of East Punjab is pleased to order in respect of instruments executed by or on behalf of any society for the time being registered or deemed to be registered under the Co-operative Societies Act or instruments executed by any officer or member of any such society and relating to the business of the society (other than those falling within list. I in the seventh schedule to the Government of India Act, 1935), the remission in the whole of East Punjab of the stamp duty with which such instruments are chargeable under the said Act.

The notification clearly exempts the instruments executed by or on behalf of any society registered under the Cooperative Societies Act. The exclusion of benefit is also in respect of societies which fall within list 1 of the 7th Schedule of the Government of India Act, 1935. In a second amendment which was made in the year 1962, it appears that some more classes of societies are also withdrawn from the exemption provisions. This has come through a second notification issued on 9.2.1962 i.e. after the Punjab Cooperative Societies Act, 1961. The three classes are reproduced:

1. Co-operative House Building Societies in Urban Areas.

2. Co-opearative Industrial Societies.

3. Co-operative Dairy Farm Societies.

While the society is admitted a cooperative society, the contention on behalf of the petitioner is that it did not fall within the three classes of society to which the benefit of these exemptions did not apply. The Collector and the District Judge have not adverted to the Government notifications issued in this regard. There was no scope for applying stamp duty and the remission through the notification that is empowered by a statutory provision of Section 38 could not have been denied to the petitioner. The orders passed are erroneous and set aside. The Civil petition is allowed.

