(2014) 09 BOM CK 0055

In the Bombay High Court

Case No : Writ Petition No. 6069 of 2005

Universal Ferroand Allied Chemicals Limited APPELLANT

Vs

The Deputy Inspector RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Constitution of India, 1950 — Article 16, 226, 227

Citation : (2015) 1 ALLMR 571 : (2015) 2 MhLj 152

Hon'ble Judges : A.S. Chandurkar, J

Bench : Single Bench

Advocate : A.S. Jaiswal, Sr. Counsel and H.N. Verma, Advocate for the Appellant; H.D. Dubey, Assistant Government Pleader, Advocate for the Respondent

Judgement

A.S. Chandurkar, J.—This Writ Petition filed under Articles 226 and 227 of the Constitution of India challenges the order dated 09.09.2005 passed by the Appellate Authority-respondent No. 1 in proceedings under Section 32B of the Bombay Stamp Act, 1948 (for short the said Act) By aforesaid order the appeal filed by the petitioner came to be partly allowed but the petitioner was directed to pay deficit stamp duty of Rs. 11,64,180/-.

2. The petitioner is a company incorporated under the Companies Act, 1956. On 27.03.1981 a Deed of Conveyance was entered into between Uniferro International Limited and the petitioner company. As per aforesaid deed, various lands mentioned in Schedule to said deed of conveyance were transferred by way of sale to the petitioner company. In the deed of conveyance it was mentioned that the vendors- Uniferro International Limited had created a mortgage/charge on the lands described in First Schedule in favour of various nationalised banks. The said deed of conveyance was duly registered on 30.03.1981. The value of the properties that where subject matter of said deed of conveyance was shown to be Rs. 68,40,328.16. On 03.07.1985 a notice was issued by the Collector of Stamps, Bhandara to the vendors in which it was stated that there was deficit

stamp duty for amount of Rs.11,63,580/- in relation to the aforesaid deed of conveyance. Thereafter, on 15.07.1985 another notice was issued in which it was stated that the instrument in question was chargeable with duty under Section 25 of the said Act. It was stated that the party should appear before the Collector of Stamps Bhandara in that regard. The vendor replied to aforesaid notice by communication dated 23.08.1985 and pointed out that provisions of Section 25 of the said Act were not attracted to the facts of the case as the properties in question were not transferred to a mortgagee. An additional reply dated 10.10.1985 was also submitted to the Collector of Stamps, Bhandara giving various details to demonstrate that liability under Section 25 of the said Act was not attracted.

3. It appears that there after on 14.03.1989 the Collector of Stamps, Bhandara issued a communication to the petitioner calling upon it to furnish copies of its balance sheets for the years 1980-81 to 1984-85. On 14.03.1989, a notice was issued to the petitioner-Company as regards hearing of the proceedings on 27.03.1989. Hearing as scheduled did not take place on said date. On 05.02.1992 another notice was issued by the Collector of Stamps to the petitioner stating therein that in the Local Audit Report for the year 1982, it was noticed that the deed of conveyance executed on 27.03.1981 had been deficiently stamped. The petitioner was therefore again called upon to submit its say in the matter. Reply thereto was submitted on 18.02.1992. It appears that without adjudicating the issue, the Collector of Stamps had made a demand for a sum of Rs. 11,63,580/- from the petitioner. The aforesaid action was challenged by the petitioner in Writ Petition no. 3188 of 1995. By judgment dated 09.02.1998, the demand notices were set aside and the Collector of Stamps was directed to proceed on the basis of show cause notice dated 05.02.1992.

4. Thereafter, the petitioner filed additional reply raising various grounds including the grounds as regards non- applicability of Section 25 of the said Act, that the proceedings were barred by limitation as well as the validity of exercise of power under Section 33 of the said Act. On 06.06.1998 the Collector of Stamps passed an order holding that the petitioner was liable to pay a sum of Rs.61,69,090/- towards stamp duty and registration fee. The aforesaid order was challenged by the petitioner in Writ Petition No. 1826 of 1999. On 09.07.2001 the Writ Petition came to be dismissed as the petitioner sought to prefer appeal under Section 32B of the said Act.

Thereafter, the petitioner filed appeal under Section 32(D) of the said Act challenging the order dated 06.06.1998. It is in said appeal that the respondent no.1 held that the petitioner was liable to pay an amount of Rs. 11,64,180.00 towards deficit duty. As stated above, the said order has been challenged in the present Writ Petition.

5. Shri A.S. Jaiswal, learned Senior Counsel with Shri H.N. Verma, learned counsel appearing for the petitioner submitted that provisions of Section 25 as they stood on the date when the deed of conveyance was executed were not at

all attracted in the facts of the present case. It was submitted that the provisions of Section 25 have been amended by Maharashtra Act No. XXVII of 1985 and the impugned demand was made under the amended provisions of Section 25. Relying upon the provisions of Section 2(d) of the said Act, it was urged that the liability to pay stamp duty would arise on the date when such instrument or document was executed. He, therefore, submitted that the provisions of Section 25 as were prevailing on 27.03.1981 ought to have been taken into account by the authorities. He submitted that this ground was specifically raised in the reply to the show cause notice as well as in the appeal preferred by petitioner before respondent no.1. However, the consideration thereof was contrary to law. It was further submitted that even if it was assumed that the instrument in question was chargeable and stamp duty in terms of Section 25 of the said Act was payable, in view of provisions of Section 32-A(5) of the said Act, the limitation prescribed was 6 years and as the show cause notice was issued on 05.06.1992, the jurisdiction in that regard had been exercised beyond the prescribed period of time. It was then submitted that on the basis of an audit objection, the demand for deficit stamp duty had been raised. He submitted that such course was not permissible in view of provisions of Section 33 of the said Act. As said instrument was not produced before any authority that could receive evidence, the issue as regards deficiency of stamp duty could not have been gone into by seeking to impound the document. The learned Senior Counsel relied upon the decision of learned Single judge in ITC Limited and Another Vs. The State of Maharashtra and Others, , for the proposition that the time of execution of a document was relevant in the context of its chargeability. Reliance was also placed upon the judgment of the Division Bench in the case of Nirmala Manherlal Shah Vs. State of Maharashtra and Others, , as regards scope of jurisdiction under Section 33 of the said Act. It was, therefore, submitted that the impugned order passed by respondent no.1 was required to be set aside as same was not in accordance with provisions of the said Act.

6. Shri H.D. Dubey, the learned Assistant Government Pleader appearing for the respondents on the other hand opposed the petition and submitted that the respondent no.2 had rightly initiated aforesaid proceedings by relying upon provisions of Section 25 of the said Act. He submitted that under Section 25 of the said Act, only certain concession was granted in case any property subject to mortgage was transferred to the mortgagee. In the present case as there was transfer in favour of third party i.e. the petitioner, it was liable to pay stamp duty. Hence the proceedings initiated in that regard were in accordance with law. It was further submitted that during the course of audit when it was noticed that there was deficiency in the amount of stamp duty paid, necessary steps in terms of Section 33 of the said Act were taken. He submitted that all the grounds raised by the petitioner in its appeal were duly considered by the respondent no.1 and accordingly the petitioner had been called upon to pay deficit stamp duty. He, therefore, submitted that there was no merit in the Writ petition and the same was liable to be dismissed.

7. The basic issue that arises for consideration is whether the petitioner was liable to pay stamp duty under Section 25 of the said Act as it stood on 27.03.1981. The proceedings in that regard were initiated on the basis of the notice dated 03.07.1985 and 15.07.1985. In aforesaid notices, it has been mentioned that the deed of conveyance was chargeable with stamp duty under Section 25 of the said Act. The provisions of Section 25 of the said Act as were on the statute when the deed of conveyance was executed on 27.03.1981 read as under:

"25. Where any property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer, the amount of any duty already paid in respect of the mortgage."

It may be noted that aforesaid Section 25 was brought on the statute book in view of its amendment by Maharashtra Act No. XVI of 1979. It may also be noted that provisions of Section 25 were thereafter again amended by Maharashtra Act No. XXVII of 1985 and provisions of said Section as amended read as under:

"25. Where any property is transferred to any person-

(a) in consideration, wholly or in part, of any debt due to him; or

(b) subject either certainly or contingently to the payment or transfer (to him or any other person) of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock; shall be deemed to be the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with ad valorem duty: Provided that, nothing in this section shall apply to any such certificate of sale as is mentioned in Article 16 of Schedule I. "

8. Thus, on perusal of provision of Section 25 of the said Act as were prevailing when the deed of conveyance was executed on 27.03.1981 indicate that where a property subject to mortgage is transferred to the mortgagee, then the mortgagee shall be entitled to deduct from the duty payable on said transfer the amount of duty already paid in respect of the mortgage. Section 25 as amended by Maharashtra Act No. 27 of 1985 provides that where property is transferred to the person in consideration of any debt due to him or subject to any other contingency then such debt, money or stock shall be deemed to be the whole or part of the consideration and the transfer would be chargeable with ad valorem duty.

9. In this regard, it would be necessary to refer to the provisions of Section 2(d) of the said Act to determine the date on which the instrument in question became chargeable under the said Act. The provisions of Section 2(d) of the said Act are clear inasmuch as the relevant date when the instrument becomes chargeable is the date of its execution. In ITC Limited and another (supra), the learned Single Judge while considering the provisions of Section 2(d) of the said Act in para 10 held as under :-

"10. From the aforesaid two definitions of the expression, ''chargeable'' and ''duly stamped'', it is clear that the stamp duty chargeable on an instrument is the duty chargeable in accordance with law in force in the State at the time of execution of such instrument. The chargeability of instrument starts at the time of its execution in the State."

In the case in hand, the document was executed on 27-03-1981 and registered on 30-03-1981. Thus, in terms of provisions of Section 2(d) of the said Act the deed of conveyance became ''chargeable'' on 27-03-1981. It will, therefore, have to be determined as to whether the said instrument was ''chargeable'' under the provisions of Section 25 of the said Act as it stood on 27-03-1981.

10. As stated above, the respondents have proceeded to initiate action against the petitioner on the ground that the instrument in question was not sufficiently stamped in terms of Section 25 of the said Act. This is clear on perusal of notice dated 15-07-1985 issued by the Collector of Stamps. The impugned order passed by respondent no.1 specifically refers to the liability of the petitioner to pay deficit stamp duty in terms of Section 25 of the said Act. Thus, once it is clear that the proceedings have been initiated on account of the instrument in question being deficiently stamped under Section 25 of the said Act, it would be necessary to examine whether the provisions of Section 25 of the said Act were attracted or not when the said instrument was executed on 27-03-1981.

11. It is not in dispute that the deed of conveyance seeks transfer by way of sale various lands referred to in the Schedule to the petitioner. It is further not in dispute that said lands were subject matter of mortgage created in favour of various nationalized banks. It is further not in dispute that the petitioner was not the mortgagee in respect of the said lands. In this background, if the provisions of Section 25 of the said Act as it stood on the date when the deed of conveyance was chargeable, it is clear that the provisions of Section 25 of the said Act would not be attracted in the facts of the present case. There being no transfer in favour of a mortgagee, the question of the instrument being deficiently stamped in terms of Section 25 would not arise. Perusal of the impugned order reveals that the authorities have proceeded to hold the instrument in question to be deficiently stamped while taking into consideration the provisions of Section 25 of the said Act as was amended by Maharashtra Act No.XXVII of 1985. It may be noted that aforesaid section underwent changed by virtue of provisions of Maharashtra Act No. XXVII of 1985 w.e.f. 22-11-1985. However, in view of the clear provisions of Section 2(d) of the said Act, the deed of conveyance having been executed on 27-03-1981, the same was chargeable in terms of the provisions of the said Act that were prevailing on said date. As observed above, provisions of Section 25 of the said Act as on the date of execution of the instrument did not attract any duty in terms of said Section.

12. From the above, it is therefore, clear that the respondent no.2 proceeded on the wrong premise that provisions of Section 25 of the said Act as amended by Maharashtra Act No. XXVII of 1985 were applicable and hence the instrument in

question was deficiently stamped. A specific plea raised by the petitioners in that regard that the date of execution of the instrument was the material date has been lost sight by the Collector of Stamps. Similar error has been committed by the appellate Authority by proceeding to adjudicate the liability of the petitioners in terms of provisions of Section 25 as amended by Maharashtra Act No.XXVII of 1985 though the deed of conveyance was chargeable in terms of Section 2(d) of the said Act on 27-03-1981. In view of aforesaid, it is clear that the authorities misdirected themselves in coming to the conclusion that the deed of conveyance was insufficiently stamped under Section 25 of the said Act.

13. In view of aforesaid finding, it is not necessary to go into other aspects of the matter as to whether the authorities were justified in relying upon the provisions of Section 32A while seeking to fasten liability on the petitioner for paying deficit stamp duty. Similarly, it is also not necessary to go into the question as to whether the Authorities were justified in initiating proceedings on the basis of audit objections raised in that regard. As it has been found that the instrument in question was not chargeable under Section 25 of the said Act as it stood on 27-03-1981, the entire exercise initiated on the basis of notices dated 03-07-1985 and 15-07-1985 would fall to the ground.

14. Hence, in view of aforesaid conclusion the following order is passed. The judgment dated 09-09-2005 passed by the respondent no.1 in Revenue Appeal No.257 of 2001 is set aside. As a consequence thereof, it is held that the demand for deficit stamp duty under Section 25 of the said Act as it stood on 27-03-1981 is not in accordance with law.

15. Writ petition is allowed by making rule absolute in aforesaid terms with no order as to costs.

