

न्यायालय राजस्व मण्डल, मध्यप्रदेश, ग्वालियर

36

समक्ष : मनोज गोयल

अध्यक्ष

प्रकरण क्रमांक निगरानी-3600/पीबीआर/2012 विरुद्ध आदेश दिनांक 28.07.2012 पारित द्वारा कलेक्टर ऑफ स्टाम्प, बड़वानी प्रकरण क्रमांक 33/बी-103/33/2011-12.

1. अनिल पुत्र कालूराम पाटीदार
2. श्रीमती अनीता पत्नी अनिल कुमार
3. संतोष पत्नी कालूराम पाटीदार
निवासी ग्राम बोरलाय,
तहसील व जिला बड़वानी

.....आवेदकगण

विरुद्ध

1. मनीष पुत्र श्री पंढरीनाथ पुरोहित
निवासी रानीपुरा, बड़वानी
2. गिर्राज पुत्र श्री जगदीशचन्द्र महाजन
निवासी एम.जी. रोड़, बड़वानी
3. कलेक्टर ऑफ स्टाम्प,
बड़वानी, जिला बड़वानी, म.प्र.

.....अनावेदकगण

श्री कौस्तुम पाठक, अभिभाषक, आवेदकगण

श्री हेमंत मूंगी, अभिभाषक, अनावेदक क्र. 3

:: आ दे श ::

(आज दिनांक 01.5.19 को पारित)

आवेदकगण द्वारा यह निगरानी भारतीय स्टाम्प अधिनियम, 1899 (जिसे संक्षेप में अधिनियम कहा जायेगा) की धारा 56 के अंतर्गत कलेक्टर ऑफ स्टाम्प, जिला बड़वानी द्वारा पारित दिनांक 28.07.2012 के विरुद्ध प्रस्तुत की गई है।

2/ प्रकरण के तथ्य संक्षेप में इस प्रकार हैं कि अनावेदक क्र. 1 मनीष पिता पंढरीनाथ पुरोहित निवासी बड़वानी, तहसील व जिला बड़वानी ने दिनांक 29.02.2012 को आवेदन पत्र के संलग्न

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कृषि भूमि बिक्री अनुबंध पत्र सम्यक् रूप से मुद्रांकित किये जाने हेतु कलेक्टर ऑफ स्टाम्प, जिला बड़वानी के समक्ष प्रस्तुत किया गया। कलेक्टर ऑफ स्टाम्प द्वारा प्रकरण क्र. 33/बी-103/33/11-12 दर्ज कर आदेश दिनांक 28.07.2012 द्वारा प्रश्नाधीन कृषि भूमि पर कुल कमी मुद्रांक शुल्क रू. 21,22,050/- का चालान कोषालय में जमा कराने के आदेश दिये गये। कलेक्टर ऑफ स्टाम्प के इसी आदेश के विरुद्ध यह निगरानी इस न्यायालय में प्रस्तुत की गई है।

3/ आवेदकगण के विद्वान अभिभाषक द्वारा लिखित तर्क में मुख्य रूप से निम्नलिखित आधार उठाये गये हैं-

(1) Section 40 of stamp Act reads as under:-

40. Collectors power to stamp instruments impounded:-

1) When the collector impounds and instrument under section 33, or receives and instruments to him under section 38 sub section (2), not being a receipt a bill of exchange or promissory note, he shall adopt the following procedure:-

a) If he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be:

b) If he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount require to made up to same, together with a penalty of five, rupees: or if he thinks fit an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees.

Provided that when such instruments has been impounded only because it has when written in contravention of section 13 or section 14, the collector may if he thinks fit, remit the whole penalty prescribed by this section.

2) every certificate under clause (a) of sub section (1) shall for the purposes of this Act, be conclusive evidence of the matters stated therein




3) where an instrument has been sent to the collector under section 38, sub section (2), the collector shall when he has dealt with it as provided by this section, return it to the impounding officer.

It appears from perusal of section 40(1)(b) of the Stamp Act [it is clear like a noon day] that a statutory power in given is to the collector of stamp for imposing of penalty more that Rs. 5, (which is a minimum penalty) and upto ten times of deficit or proper stamp duty i.e. higher side or maximum penalty.

By no stretch of imagination it can be said that such discretionary power should not be exercised arbitrary, unreasonable, against the statutory provisions as well as their object and not against the interest of public at large.

In present case the respondent no. 3, while exercising the discretionary power for imposing the penalty has not considered the facts that deliberately the respondent no. 1 & 2 had avoided to pay proper stamp duty upon agreement to sale, which is against the interest of Revenue of State i.e. against public interest, therefore they are required to be penalized at higher side i.e. ten times penalty on deficit stamp duty.

(1) It is no more res integra that at the time of determination of penalty, the collector of stamp is mandatorily required to ascertain that whether there was an deliberate attempt to defraud the revenue, if answer found yes then he has to impose the maximum penalty.

In present case, from the beginning, the respondent no. 1 & 2 have categorically stated that due to ignorance of law, they could not pay proper stamp duty. First of all, it is settled law that ignoratia non excusate i.e. of law is no excuse albeit such ground is not sustainable because it appears from bare perusal of agreement (annexure P/1) that it was drawn by a law expert but also notarized by a notary public advocate, therefore the grounds

raised for non-payment of proper duty at the time of execution of agreement are not sustainable and respondent no. 1 & 2 deserve to be penalized by maximum penalty.

- (2) The respondent no. 3 has not considered the public interest while determining the penalty and has imposed a meager amount of penalty of Rs. 100000/- against deficit stamp duty of Rs. 2022050/- there are two objects of the legislature behind imposition of penalty namely penalize the defaulter as well as recover interest upon deficit stamp duty, which could be earned upon payment of proper stamp duty. In present case, the respondent no. 1 & 2 had deliberately defrauded the revenue of state Govt., and had attempted to incur loss of revenue of Rs. 2022050/- therefore, the respondent no. 1 & 2 deserve to be penalized maximum penalty i.e. 10 times of deficit stamp duty.
- (3) That in light of order passed by Hon'ble high court bench at indore 2018(1) MPJL 318. (Annexure P/7), Hon'ble court has considered the fact that imposing of 10 times penalty is correct. Para 23 & 31 has held as under;

23. A complaint was made by Respondent No. 4 to the Collector of Stamp that the Trustees have not paid the adequate stamp duty on the said "Deed of Assent. The collector of stamp issued a notice to the trust and ishan Dhanda under Section 48-B of the Indian Stamp Act as to why the stamp duty of Rs. 1,62,82,150-00 be not recovered and as to why the maximum penalty of 10 times to the stamp duty i.e. Rs. 16,28,21,500-00 be imposed. A detailed reply was filed by the petitioner denying their liability to pay the stamp duty as the Deed of Assent is not required to be registered or stamped by virtue of section 332 of the Indian Succession Act. The collector of Stamp vide order dated 22-09-2008 has rejected all the contentions of the petitioner and has held that by way of Deed of Assent entire immovable properties has been absolutely transferred and vested with jogesh Dhanda and Ishan Dhanda and it comes under the category of Gift deed, therefore, the stamp duty @ 8% is liable to be imposed. Since the



petitioner has deliberately avoided the stamp duty, therefore, penalty of 10 times to the stamp duty is liable to be imposed.

31. Shri chitale, learned Senior Counsel has vehemently contested about the imposition of penalty of 10 times to the stamp duty. He submits that there is no justification on the part of the collector of stamp to impose 10 times penalty. Various judgments have been cited on a point of penalty in a taxation matter and submit that even if taxability is proved, the penalty is not automatic. The penalty is leviable only if the conduct of the assessee is dishonest, deliberate and distinct objective of breaching the law. He has placed reliance over the judgments of CIT v. Hindustan Electro Graphites Ltd., (2000) 3 SCC 595; E.I.D. Parry (I) Ltd. V. CCT, (2000) 2 SCC 321; Akbar Badrudin Giwani v. Collector of Customs, (1990) 2 SCC 203; Cement Marketing Co. of India Ltd. V. CST, (1980) 1 SCC 71; Hindustan Steel Ltd. V. State of Orissa, (1969) 2 SCC 627; and CIT v. Bhikaji Dadabhai and Co., AIR (1961) 3 SCR 923. It is further submitted that no notice was issued before imposing the penalty by the collector of stamp. The collector issued composite notice to the petitioner under the provisions of Stamp Act for recovery of deficit stamp duty as well as the penalty. Therefore, it cannot be said that no notice was issued to the petitioner before imposing penalty. The resolution was passed on 6th april, 2005 to execute the Deed of transfer by Trustees in favour of Jogesh Dhanda and Ishan Dhanda. But later on they deliberately executed the deed in the name of Deed of Assent on a stamp paper of Rs. 200-00 and terms as transfer by one trustee to another trustee under Article 56(d) of Schedule 1-A. The Article 56(d) provide payment of stamp duty @ 200/- where any trust property is being transferred without consideration from one Trustee to another Trustee; or Trustee to beneficiaries. The basic requirement of this transfer is that the property remains as Trust, then only it is required to be executed only on stamp papers of Rs. 200-00. But in the present case the complete title has been transferred by trust to Jogesh Dhanda and Ishan Dhanda in the name



of Deed of Assent. Therefore, there was intention to evade the heavy stamp duty on such transaction. Therefore, the collector of stamp has rightly imposed 10 times penalty which is maximum under the Act.

उनके द्वारा निगरानी स्वीकार कर अधीनस्थ न्यायालय द्वारा पारित आदेश निरस्त करने का अनुरोध किया गया।

4/ अनावेदक क्र. 3 शासन के विद्वान अभिभाषक द्वारा विधि अनुसार प्रकरण का निराकरण करने का अनुरोध किया गया ।

5/ उभय पक्ष के विद्वान अधिवक्ता द्वारा प्रस्तुत तर्कों के संदर्भ में अभिलेख का अवलोकन किया गया। प्रथम दृष्टया आवेदक के इस तर्क में बल है कि कलेक्टर ऑफ स्टाम्प द्वारा बिना किसी आधार के बहुत कम शास्ति अधिरोपित की गई है । इस प्रकरण में यह उचित होगा कि भारतीय मुद्रांक अधिनियम (संशोधन) अधिनियम 2016 की संशोधित धारा 40 में जो शास्ति आरोपित करने के प्रावधान दिये गये हैं, उसके अनुरूप शास्ति अधिरोपित करने हेतु प्रकरण कलेक्टर आफ स्टाम्प को प्रत्यावर्तित किया जाये ।

6/ उपरोक्त विवेचना के आधार पर कलेक्टर ऑफ स्टाम्प, जिला बड़वानी द्वारा पारित आदेश दिनांक 28.07.2012 के द्वारा अधिरोपित शास्ति को संशोधित करने के लिए प्रकरण कलेक्टर आफ स्टाम्प को प्रत्यावर्तित किया जाता है ।


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(मनोज गायल)

अध्यक्ष

राजस्व मण्डल, मध्यप्रदेश

ग्वालियर