

2014 (2) GLR 1749

**GUJARAT HIGH COURT**

**Hon'ble Judges:Jayant Patel, J.**

Reliance Industries Limited Versus State Of Gujarat

SPECIAL CIVIL APPLICATION No. 7336 of 2004 ; \*J.Date :- JANUARY 24, 2014

- [STAMP ACT, 1899](#) Article - 27

**Stamp Act, 1899 - Schedule I Art. 27 - petitioner sought refund of stamp duty paid on ground of exemption - document of mortgage-deed was not in existence prior to issuance of debentures - mortgage-deed not registered nor only stamped - held, petitioner on facts, not entitled to exemption and hence stamp duty is not required to be refunded - petition dismissed.**

**Imp.Para:** [ [9](#) ] [ [10](#) ] [ [11](#) ] [ [12](#) ] [ [13](#) ] [ [14](#) ] [ [15](#) ]

Equivalent Citation(s):

2014 (2) GLR 1749 : 2014 (2) GCD 1543

**JUDGMENT :-**

**1** The petitioner company has preferred this petition seeking relief to issue appropriate writ for direction to the respondent authority to refund the amount of Rs.1,87,50,000/- together with the interest accrued thereon on the date of payment till realization.

**2** The short facts of the case are that the General Board of the shareholders of the petitioner company, vide resolutions dated th th 27 September, 2001 and 30 January, 2002, had decided to issue non-convertible and non- cumulative, unsecured, taxable, redeemable bonds of "S" Series of the face value of Rs.10 lac each, aggregating to Rs.125 crore and of the same type of bonds of "T" Series aggregating to Rs.125 crore, save and except that there was change in the interest for "S" Series at 9.90% p.a., whereas in "T" Series, it was 9.60% p.a. Based on the resolutions of the shareholders, the Board of Directors also accordingly resolved. Ultimately, vide Resolution dated 25.6.2002, copy whereof is produced at Annexure-A, such bonds by private placement were issued. The issue was opened on 25.6.2002 and closed on the same day. As per the document at Annexure-A (internal page 12), the offer was subscribed and a

sum of Rs.125 crore was retained by the company. The deemed date of allotment was fixed as "25.6.2006". The listing was fixed in wholesale debts market of segment of National Stock Exchange, Mumbai.

**3** The letter of allotment was issued on 25.6.2002 for issuance of such unsecured debentures and copy of the said letter is produced at Annexure-C. However, in the said letter of allotment the deemed date of allotment of debenture was mentioned as 25.6.2002. Thereafter similarly T Series debentures as referred to hereinabove were also allotted. On 12.7.2002 above referred T Series debentures were also allotted by undertaking the same procedure. On 8.7.2002 as well as on 22.7.2002 the stamp duties were paid of Rs.93,75,000/- and Rs.93,75,000/- for issuance of unsecured debentures of S Series and T Series, but the case of the petitioner is that it was under bonafide mistake. On 16.8.2002 the petitioner addressed a letter to the Superintendent of Stamp stating that the payment has been made through oversight and therefore, the said amount be refunded. It further appears that thereafter on 7.9.2002 resolution was passed in the Finance Committee of the Board of the petitioner Company that the bond issued be secured by creating an English mortgage under the Registered Debenture Trust Deed in favour of UTI Bank Ltd., Mumbai as trustees of the bond holder. On 24.9.2002 as per the petitioner the mortgage deed for securing the debenture was executed. The stamp duty of Rs.2,50,000/- was paid on 24.9.2002 by affixing the stamp. Subsequently vide letter dated 17.1.2003 the petitioner was called upon to pay deficit stamp duty of Rs.20,000/- plus the penalty of Rs.500/- of the said deed dated 24.9.2002 which as per the petitioner is paid on 18.1.2003. Thereafter also, as no refund was made of the amount of Rs.1,87,50,000/- hence the present petition before this Court.

**4** I have heard Mr.K.S.Nanavati, learned Senior Counsel with Mr.Gandhi, for the petitioner and Mr.H.S.Soni, learned A.G.P. for the respondent.

**5** Learned counsel for the petitioner contended that charging event is the date on which the bonds are actually issued. As per Article 27 of the Indian Stamp Act (hereinafter referred to as the Act ) the duty was not leviable at the time of the allotment. As per the petitioner after the allotment deed before the bonds were actually issued, the petitioner company decided to make them as secured debenture and the mortgage deed was also executed and therefore, it would fall in the category of exemption, since the debentures were secured debentures and not unsecured debentures. However, under the bonafide mistake, the petitioner paid the stamp duty and therefore, if the duty was not chargeable as per the Stamp Act, the same was required to be refunded, since not refunded, this Court may issue appropriate direction.

**6** Whereas learned AGP contended that as per the respondent, the debentures are deemed to have been issued on 25.6.2002 and 12.7.2002 and on that date they were unsecured debentures. The appropriate declaration is also filed by

the Company before the National Security Depository Ltd., and therefore duty was actually leviable and therefore paid by the Company. Further, the alleged deed of mortgage may be an administrative decision of the Company to make the bond secured, but thereby it cannot be said that the earlier allotment/issuance of the bond would not stand. Even the alleged deed of mortgage was not properly stamped on 24.9.2002 and has been properly stamped for the first time on 18.1.2003. Therefore, even if the actual date of debenture is considered as of 4.10.2002, on that date exemption was not available since the document was not duly stamped. It was therefore, submitted that the refund is not available to the petitioner Company.

**7** In order to consider the controversy, Article 27 of the Stamp Act which is pressed in service deserves to be considered. The same reads as under:-

27. DEBENTURE (Whether a 0.05% per year of the mortgage debenture or face value of the not), being a marketable debenture, subject to security transferable- the maximum of 0.25% or (a) by endorsement or by rupees twenty-five lakhs a separate instrument of whichever is lower. transfer (b) by delivery Explanation:- The term "Debenture" includes any interest coupons attached but the amount of such coupons shall not be included in estimating the duty. Exemption A debenture issued by an incorporated company or other body corporate in terms of a registered mortgage-deed, duly stamped in respect of the full amount of debentures to be issued thereunder, where by the company or body borrowing makes over, in whole or in part, their property to trustees for the benefit of the debentures holders: Provided that the debentures so issued are expressed to be issued in terms of the said mortgage-deed

**8** The aforesaid shows that the stamp duty is leviable on the debentures being issued but the exemption would be available upon the debenture issued, if the Company concerned registers mortgage deed duly stamped in respect of full amount debenture issued for the benefit of debenture holders. The relevant aspect is that two conditions are required to be satisfied; one is that it should be a registered mortgage deed and second is that it should be duly stamped. Further, the language of the aforesaid article and more particularly under the head of "exemption" shows that it refers to "debenture to be issued thereunder", meaning thereby, there has to be an existence of mortgage deed and duly stamped prior to issuance of the debentures. It is by now well settled that when any provision is made in any taxing statute for exemption the same must be strictly interpreted. The aforesaid three conditions are, (1) the mortgage deed must be in existence prior to the issuance of the debenture, (2) the mortgage deed should be registered and (3) it should be duly stamped.

**9** If the facts of the present case are examined, it appears that in the resolution of the petitioner company copy whereof is produced at Annexure-A, the deemed date of allotment is 25.6.2002. The amount of debenture is already received

prior the said deemed date of allotment. The resolution for allotment of debenture is that, be and hereby allotted . Thereafter, it is resolved that the Company Secretary of the Company of petitioner is authorized to take necessary steps to issue the letter of allotment and bond certificate to all eligible allottees and to undertake further necessary formalities in this regard. Such would mean that the petitioner company has accepted the offer of the debenture subscriber and has fixed the deemed date of allotment as of 25.2.2002. The formality of issuance of certificate is to be undertaken by the Company Secretary of the petitioner Company.

**10** In my view, once the debenture is subscribed and the amount is received and the decision is taken to retain the amount of debenture and also to fix the deemed date of the allotment of debenture, merely because a formality of issuance of certificate was taken at the later date, such would not alter the character of the debenture issued on the deemed date of 25.2.2002 nor it can be said that the duty which had not become leviable on the date when the company passed the resolution on 25.6.2002 for fixing a deemed date for allotment of the debenture on 25.6.2002. Similar is the position in respect of the debenture issued of T Series but the date would be different as that of 12.7.2002. Further if both the aforesaid deemed dates are considered as that of 25.6.2002 and 12.7.2002 for S Series and T Series debenture respectively on those dates it was decided to issue debentures and there was no existence of mortgage deed for securing the debenture because as per the petitioner the mortgage deed is stated to have been executed on 24.9.2002. Further it has been stated that since the debentures were issued in demat form, no formal certificate was issued, but the information which was submitted by the Company by way of intimation dated 1.10.2002 for admission for debt instrument is produced at Annexure-B to the affidavit-in-reply filed on 22.12.2008 of Shri Rohit Vyas on behalf of the petitioner. In the aforesaid intimation for admission of the debt instrument, issue date is mentioned of 25.6.2002. Once in the declaration given on behalf of the petitioner company to the competent authority of the National Security Depositories Ltd., it is declared that the issue date is 25.6.2002, the same is to be accepted as true and correct and it would not lie in the mouth of the petitioner Company to contend that the issue date is not the same but the deemed date of the allotment only is 25.6.2002. The aforesaid information and the details are coming on record in the present petition through the affidavit-in-reply filed on behalf of the petitioner itself and it is a declaration given by the Company to the competent authority for admission of the debt instrument and hence the same is to be considered as the date for issue of debenture on 25.6.2002. Under the circumstances even if it is considered that the date of allotment would not be relevant but the date of issue of the debenture would be relevant, then also, the same is 25.6.2002. Admittedly on the said date, the so called mortgage deed for securing the debenture was not in existence at all since the same is executed on 24.9.2002.

**11** The aforesaid discussion shows that as the mortgage deed was not in existence on the date when the debentures were issued, hence the first condition of the existence of the mortgage deed for the debenture to be issued which is relevant for the purpose of considering the case for exemption was not satisfied.

**12** Apart from the above, even if the matter is considered on the premise that the actual debentures issued were of the category of secured debenture, then also, as per the petitioner the relevant date is 4.10.2002, though in reality, the debt is admitted by communication dated 1.10.2002 (Annexure-B). Leaving aside the said aspect, even if it is treated as 4.10.2002 and further scrutiny is made as to whether the case would fall in the category of exemption or not, two conditions were not satisfied on 4.10.2002 because the document was only executed but not registered and second is that it was not duly stamped. So far as second condition is concerned, it is an admitted position that the requisite stamp duty was Rs.2,70,100/-, whereas the actual duty was paid of Rs.2,50,100/- and therefore, the petitioner company was called upon vide letter dated 17.1.2003 to pay deficit stamp duty of Rs.20,000/- plus penalty of Rs.500/- and the same has been accepted by the petitioner on 18.1.2003 and the deficit duty has been actually paid. The copy of the intimation for stamp duty is produced at Annexure-J in the petition and the payment of stamp duty is also produced by the petitioner at Annexure- I. Therefore, the second condition in any case was not satisfied for mortgage deed duly stamped.

**13** On the first condition of registration there is no clear evidence available of the exact date on which the document was registered by the Sub-Registrar because at the relevant point of time when the document was executed on 24.9.2002 the stamp duty was not fully paid. In normal circumstances, if the stamp duty is not fully paid, the Sub- Registrar would not register the document. It appears from the communication at Annexure-J that the said order for recovery of the deficit stamp duty came to be passed in the proceedings under Section 33 of the Bombay Stamp Act. Therefore, it is not possible to give a concluded finding as to whether the document was duly registered on 24.9.2002 or not.

**14** In my view, for claiming exemption satisfaction of both the conditions are required, apart from the third condition for existence of the mortgage deed prior to the issuance of the debenture. The examination of the aforesaid two conditions show that both must be satisfied for claiming exemption that the mortgage deed must be registered and that it must be duly stamped. Even if it is considered that since there is no sufficient proof available for actual date on which the document was registered, the fact remains that as per the documents produced by the petitioner it was not duly stamped on 24.9.2002 and the document of mortgage deed came to be duly stamped only on 18.1.2003 when the deficit stamp duty was paid. Such would mean that on the alleged date of 4.10.2002 which is stated to be relevant date for issuance of the

bond by the petitioner, the second condition for document being duly stamped was not satisfied.

**15** Under the circumstances, when the requisite condition for claiming exemption has not been satisfied, it cannot be said that the decision of the respondent denying refund of the amount would be arbitrary or illegal.

**16** There cannot be second opinion on the aspect that if tax or the duty is paid by mistake or any bonafide, the citizen or any person would be entitled to refund of the amount from the revenue, but if the duty is paid on the premise that the duty is payable and one is not fulfilling the condition for claiming exemption and on that basis the amount paid as duty is not refunded, the action cannot be said to be illegal.

**17** In view of the aforesaid observations and discussion, the petition fails. Hence the same is dismissed. Considering the facts and circumstances no order as to costs.