

ASSET RECONSTRUCTION CO. (INDIA) LTD.

A

v.

CHIEF CONTROLLING REVENUE AUTHORITY

(Civil Appeal No. 3070 of 2022)

B

APRIL 26, 2022

[HEMANT GUPTA AND V. RAMASUBRAMANIAN, JJ.]

Gujarat Stamp Act, 1958 – ss. 9(a), 54(1)(a) – Art. 20(a), 45(f) of Schedule I – Deed of assignment containing Power of Attorney (POA) – POA chargeable to stamp duty or not – The Full Bench of the High Court came to conclusion that the appellant (an asset reconstruction company, who was assigned debt by the bank) has to pay stamp duty as fixed by Art.45(f) – High Court opined that merely because the power to sell, forms part of the deed of assignment under Schedule 3, the appellant could not escape the charge of duty and that the PoA is required to be considered independently – On appeal, held: What was presented for registration by the appellant was a single document namely an “Assignment Agreement” – The High Court overlooked the fact that there was no independent instrument of PoA and that in any case, the power of sale of a secured asset flowed out of the provisions of the Securitisation Act, 2002 and not out of an independent instrument of PoA – After having accepted the deed of assignment as an instrument chargeable to duty as a conveyance under Art. 20(a) and after having collected the duty payable on the same, it is not open to the respondent to subject the same instrument to duty once again u/Art. 45(f) – Once a single instrument has been charged under a correct charging provision of the Statute, namely Art. 20(a), the Revenue cannot split the instrument into two, because of the reduction in the stamp duty facilitated by a notification of the Government issued u/s. 9(a) – Since the High Court did not address these issues and went solely on the interpretation of Art. 45(f), the same is unsustainable – The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – ss. 3, 5(1)(b)

C

D

E

F

G

H

A **Allowing the appeal, the Court**

- HELD:** 1. The High Court overlooked the fact that there was no independent instrument of PoA and that in any case, the power of sale of a secured asset flowed out of the provisions of the Securitisation Act, 2002 and not out of an independent instrument of PoA. For invoking Article 45(f), two conditions have to be satisfied. They are, (i) the PoA should have been given for a consideration; and (ii) an authorization to sell any immovable property should flow out of the instrument. In the case on hand, the consideration paid by the appellant to OBC, was for the purpose of acquisition of the financial assets, in respect of a particular borrower. The draft of the PoA contained in Schedule 3 of the deed of assignment was only incidental to the deed of assignment. The deed of assignment has already been charged to duty under Article 20(a) which deals with “conveyance”. In fact Article 45(f) also requires a PoA covered by the said provision to be chargeable to stamp duty under Article 20. [Paras 9, 11 & 12][1099-E; 1100-B-D]

2. But what has happened in this case was that under a Notification dated 25th January, 2002, the Government ordered the reduction of stamp duty payable on an instrument of securitization of loans or assignment of debt with underlying securities, to 75 paise for every Rs.1000 or part thereof. The above Notification was amended by a subsequent Notification dated 1st April, 2003. In view of the Notification dated 01.04.2003 issued in exercise of the power to reduce, remit or compound the duty, conferred by Section 9(a) of the Act, the amount of duty chargeable in terms of Article 20(a) was capped at Rs. 1,00,000/. In addition to the said amount of Rs.1,00,000/, the appellant was asked to pay an additional duty of Rs.40,000/ under Section 3A. The appellant has thus paid a total amount of Rs.1,40,000/ with the instrument having been charged as a conveyance under Article 20(a). In all taxing Statutes, there are taxing provisions and machinery provisions. Once a single instrument has been charged under a correct charging provision of the Statute, namely Article 20(a), the Revenue cannot split the instrument into two,

because of the reduction in the stamp duty facilitated by a notification of the Government issued under Section 9(a). In other words after having accepted the deed of assignment as an instrument chargeable to duty as a conveyance under Article 20(a) and after having collected the duty payable on the same, it is not open to the respondent to subject the same instrument to duty once again under Article 45(f), merely because the appellant had the benefit of the notifications under Section 9(a). Since the impugned order of the High Court did not address these issues and went solely on the interpretation of Article 45(f), the same is unsustainable. Therefore, the appeal is allowed and the impugned order is set aside. The demand made by the Chief Controlling Revenue Authority is consequently set aside. [Paras 13-16][1100-E-F; 1101-A, D-H; 1102-A]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3070 of 2022.

From the Judgment and Order dated 22.08.2016 of the High Court of Gujarat at Ahmedabad in Stamp Reference No. 2 of 2012.

V. Chitambaresh, Sr. Adv., P. S. Sudheer, Rishi Maheshwari, Ms. Anne Mathew, Bharat Sood, Ms. Shruti Jose, Advs. for the appellant.

Ms. Archana Pathak Dave, Ms. Deepanwita Priyanka, Advs. for the respondent.

The Judgment of the Court was delivered by

V. RAMASUBRAMANIAN, J.

1. Aggrieved by the opinion rendered by the Full Bench of the High Court of Gujarat in a Stamp Reference under Section 54(1)(a) of the Gujarat Stamp Act, 1958 (*hereinafter referred to as the 'Act'*), made by the Chief Controlling Revenue Authority of the State of Gujarat, the Asset Reconstruction Company (India) Ltd., has come up with the above appeal.

2. We have heard Mr. V. Chitambaresh, learned senior counsel appearing for the appellant and Ms. Archana Pathak Dave, learned counsel appearing for the State of Gujarat.

A

B

C

D

E

F

G

H

- A 3. The Oriental Bank of Commerce ('OBC' for short) granted certain facilities to a borrower and the borrower committed default in repayment. Unable to recover the loan, the Bank assigned the debt in favour of the appellant herein, which is an Asset Reconstruction Company registered with the Reserve Bank of India under Section 3 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*hereinafter referred to as 'Securitisation Act 2002'*). The assignment made by the OBC was under an Agreement dated 18.11.2008. The Assignment Agreement was registered with the Sub-Registrar, Bharuch, on 18.11.2008. In fact, the registration of the document was preceded by an adjudication under Section 31 of the Act.
- B 4. However, an audit objection was raised by the Office of the Accountant General on the ground that the deed of assignment contained a reference to a Power of Attorney ('PoA' for short) in Schedule 3 and that the said PoA was chargeable to stamp duty under Article 45(f) of Schedule-I to the Act. A demand for deficit stamp duty to the tune of Rs.23,53,800/- was raised pursuant to the audit objection.
- C 5. Thereafter, the Deputy Collector (Stamp Duty) referred the matter to the Chief Controlling Revenue Authority, who in turn issued a notice to the appellant herein. After considering the reply submitted by the appellant, the Chief Controlling Revenue Authority passed an order dated 04.01.2012 setting aside the order of adjudication passed on 23.10.2008 and directing recovery of the deficit stamp duty.
- D 6. Aggrieved by the said order, the appellant submitted an application under Section 54(1)(a) of the Act. On the said application, the Chief Controlling Revenue Authority referred the following two questions for the opinion of the Court:-
- E "(A) Whether the objection raised by the Account General, Ahmedabad in audit para, in the year 2008 is proper or not, as per Article-45(f) of the Bombay Stamp Act, 1958 or not?
- F "(B) Whether the Asset Reconstruction Company (India) Limited is liable to pay stamp duty of Rs.24,94,100/- i.e. 4.9% as per Article-20(a) of the Bombay Stamp Act or not?"
- G 7. For finding an answer to the above questions, the Full Bench of the High Court examined the recitals contained in the deed of assignment and found that the Bank had agreed to execute an irrevocable PoA in

favour of the appellant herein, substantially in the form set out in Schedule 3 of the deed of assignment. The form set out in Schedule 3 contained recitals empowering the assignee, as the agent of the Bank, to sell any immovable property. Therefore, considering the fact that Article 45(f) of Schedule I to the Act makes a PoA given for a consideration and containing an authority to sell any immovable property chargeable to stamp duty as a conveyance, the High Court came to the conclusion that the appellant has to pay stamp duty as fixed by Article 45(f). The High Court opined that merely because the power to sell, forms part of the deed of assignment under Schedule 3, the appellant could not escape the charge of duty and that the PoA is required to be considered independently.

A

B

C

D

E

F

G

H

8. But we do not think that the above reasoning can be accepted. First of all, what was presented for registration by the appellant was a single document namely an “Assignment Agreement”. Clause 11.12 of the Assignment Agreement contained recitals to the effect that the seller (assignor, namely the *OBC*) had agreed to execute simultaneously with the execution of the deed of assignment, an irrevocable PoA, substantially in the form set out in Schedule 3. What was contained in Schedule 3 to the Assignment Agreement was the format of an irrevocable PoA.

9. The High Court overlooked the fact that there was no independent instrument of PoA and that in any case, the power of sale of a secured asset flowed out of the provisions of the Securitisation Act, 2002 and not out of an independent instrument of PoA. Section 2(zd) of the Securitisation Act, 2002 defines a ‘secured creditor’ to mean and include an Asset Reconstruction Company. The appellant has acquired the financial assets of OBC in terms of Section 5(1)(b) of the Securitisation Act, 2002. Therefore, under sub-section (2) of Section 5 of the Securitisation Act, 2002, the appellant shall be deemed to be the lender and all the rights of the Bank vested in them. In fact, under Amendment Act 44 of 2016, sub-section (1A) was inserted in Section 5 of the Securitisation Act, exempting from stamp duty, any document executed by any bank under Section 5(1) in favour of an Asset Reconstruction Company acquiring financial assets for the purposes of asset reconstruction or securitization. Though the said amendment may not be applicable to the case of the appellant, as the deed of assignment, in this case, was executed long prior to the amendment, we have just taken note of the amendment to show how far the Parliament has gone.

A 10. Article 45(f) of Schedule I to Act, reads as follows:-

(f) (i) when given for consideration and authorizing the attorney to sell any immovable property *The same duty as is leviable on a conveyance under Article 20 for the amount of the consideration or, as the case may be, the market value of the immovable property whichever is greater;*

B

11. For invoking Article 45(f), two conditions have to be satisfied. They are, (i) the PoA should have been given for a consideration; and (ii) an authorization to sell any immovable property should flow out of C the instrument.

12. In the case on hand, the consideration paid by the appellant to OBC, was for the purpose of acquisition of the financial assets, in respect of a particular borrower. The draft of the PoA contained in Schedule 3 of the deed of assignment was only incidental to the deed of assignment.

D The deed of assignment has already been charged to duty under Article 20(a) which deals with “conveyance”. In fact Article 45(f) also requires a PoA covered by the said provision to be chargeable to stamp duty under Article 20.

13. But what has happened in this case was that under a E Notification bearing No.GHM/2002-5-M STP-102000-2749/H-1 dated 25th January, 2002, the Government ordered the reduction of stamp duty payable on an instrument of securitization of loans or assignment of debt with underlying securities, to 75 paise for every Rs.1000 or part thereof. This Notification reads as follows:-

F *In exercise of the powers conferred by clause (a) of Section 9 of the Bombay Stamp Act, 1958 (Bom LX of 1958) and in supersession of Government Orders Revenue Department No. GHM-98-22-M-STP-1096-2527-H-1 dated 26.02.1998, the Government of Gujarat hereby reduces from the date of publication of this order the duty with which an instrument of securitization of loans or assignment of debt with underlying securities chargeable under Article 20 (a) of Schedule I to the said Act to 75 paise for every rupees 1000 or part thereof the loan securitised or debt assigned with underlying securities.*

G *By order and in the name of the Governor of Gujarat.”*

14. The above Notification was amended by a subsequent A
Notification bearing No. GHM/2003/28/STP/102002/2065/H-1 dated 1st
April, 2003. The said Notification reads as follows:-

“In exercise of powers conferred by clause (a) of section 9 of the Bombay Stamp Act, 1958 (Bom LX of 1958), the Government of Gujarat hereby amends Government Order No. GHM/2002/5/M/STP/102000/ 2749/H-1, dated 25th January, 2002 as follows, namely:-

In the said order, for the words and figures “to seventy five paise for every rupees 1000 or part thereof” the words and figures “subject to maximum of rupees one lakhs, seventy-five paise for every rupees 1000 or part thereof” shall be substituted.

By order and in the name of the Governor of Gujarat.”

15. In view of the Notification dated 01.04.2003 issued in exercise D
of the power to reduce, remit or compound the duty, conferred by
Section 9(a) of the Act, the amount of duty chargeable in terms of Article
20(a) was capped at Rs. 1,00,000/- In addition to the said amount of
Rs.1,00,000/-, the appellant was asked to pay an additional duty of
Rs.40,000/- under Section 3-A. The appellant has thus paid a total amount
of Rs.1,40,000/- with the instrument having been charged as a conveyance
under Article 20(a). E

16. In all taxing Statutes, there are taxing provisions and machinery F
provisions. Once a single instrument has been charged under a correct
charging provision of the Statute, namely Article 20(a), the Revenue
cannot split the instrument into two, because of the reduction in the
stamp duty facilitated by a notification of the Government issued under
Section 9(a). In other words after having accepted the deed of assignment
as an instrument chargeable to duty as a conveyance under Article 20(a)
and after having collected the duty payable on the same, it is not open to
the respondent to subject the same instrument to duty once again under
Article 45(f), merely because the appellant had the benefit of the G
notifications under Section 9(a). Since the impugned order of the High
Court did not address these issues and went solely on the interpretation
of Article 45(f), the same is unsustainable. Therefore, the appeal is H

A allowed and the impugned order is set aside. The demand made by the Chief Controlling Revenue Authority is consequently set aside. There will be no order as to costs.

Ankit Gyan
(Assisted by : Rahul Rathi, LCRA)

Appeal allowed.