

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**W. P. (C) 2393/2010 & CM APPL 4794/2010 (for stay)**

Reserved on: March 26, 2011

Decision on: April 21, 2011

S. E. INVESTMENTS LTD.

THROUGH DIRECTOR

..... Petitioner

Through: Mr. P. Nagesh, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Maneesha Dhir with

Ms. Preeti Dalal and

Ms. Tanu Goswami, Advocates for R-1/UoI.

Mr. Baldev Malik, Advocate for R-2/ROC.

Mr. N. Waziri, Standing Counsel with

Mr. Shoiab Haider, Advocate for

R-3 & 4/GNCTD.

**CORAM: JUSTICE S. MURALIDHAR**

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|---|-----|
| 1. Whether Reporters of local papers may be<br>allowed to see the judgment? | No  |
| 2. To be referred to the Reporter or not?                                   | Yes |
| 3. Whether the judgment should be reported in Digest?                       | Yes |

**J U D G M E N T**

1. The Petitioner questions the authority and competence of the Registrar of Companies ('ROC'), Respondent No. 2, and the Collector of Stamps, Government of National Capital Territory of Delhi ('GNCTD'), Respondent No. 4, to levy and collect stamp duty on the increased authorized share capital under the Indian Stamp (Delhi Amendment) Act,

2007 ('Act').

2. The Petitioner, a public limited company, was incorporated on 5<sup>th</sup> March 1992 with an authorized share capital comprising of ten thousand equity shares of Rs. 100/- each and ten thousand redeemable non-cumulative preferential shares of Rs. 100/- each. On 29<sup>th</sup> December 2008 the Petitioner increased its authorized share capital from Rs. 3.50 crores to Rs. 6 crores. Subsequently, by an order dated 9<sup>th</sup> October 2009 passed by this Court the authorized share capital was increased from Rs. 6 crores to Rs. 8.50 crores. The Petitioner paid stamp duty on the increase in the authorized share capital. On 15<sup>th</sup> January 2010, the Petitioner further increased its authorized share capital from Rs. 8.50 crores to Rs. 125 crores and filed e-Form-5 on 27<sup>th</sup> January 2010. On 13<sup>th</sup> March 2010 the Petitioner submitted an application to ROC for determination of stamp duty on the increase in authorized share capital. In particular Respondent No. 4 was requested to clarify whether as per Article 10 of the Schedule IA of the Indian Stamp (Delhi Amendment) Act, 2007 any additional stamp duty on increase in the authorized capital was payable. It is stated that on or about 17<sup>th</sup> March 2010 the ROC informed the Petitioner that in terms of Regulation 17 of the Companies Regulations 1956, the Form 5 dated 27<sup>th</sup> January 2010 filed by the Petitioner had been examined and kept pending on the ground that the company had not paid the stamp duty

on the Form 5 with reference to the increased authorized capital. The Petitioner was directed to file complete Form 67 in all respects by 15<sup>th</sup> April 2010. The Petitioner paid a sum of Rs. 58,25,000/- to the ROC as fees. The Petitioner was directed to pay the stamp duty on increase in the authorized share capital by 15<sup>th</sup> April 2010 failing which the e-Form 5 would be treated as invalid and would not be taken on record in terms of Regulation 17 of the Companies Regulations 1956. The Petitioner then wrote to the ROC on 4<sup>th</sup> March 2010 stating that there is no provision in the Delhi Stamp Act to pay the stamp duty on increase in the authorized share capital. However, the ROC insisted by e-mail dated 15<sup>th</sup> April 2010 that the Petitioner should file Form-67 in all respects and clarified that if the stamp duty is not paid by the Petitioner, the amount of Rs. 58,25,000/- deposited with the ROC will stand forfeited.

3. During the pendency of the writ petition an order dated 11<sup>th</sup> August 2010 was passed by Respondent No. 4, the operative portion of which reads as under:

“As per document submitted by the company it has been observed that the Authorized share capital of the company has been increased from 8.50 crores to Rs. 125 crores in the meeting of the Board of Directors held on 22<sup>nd</sup> December 2009. As per Article 10 (a) and (b) of Schedule 1A of the Indian Stamp Act, 1899, stamp duty

chargeable on the authorized capital of the company is 0.15% of the authorized share capital with a monetary ceiling of Rs. 25 lakhs. Thus, the stamp duty chargeable on the authorized share capital of Rs. 125 crore comes to Rs. 18,75,000/-. In case you have already paid the stamp duty on authorized share capital of Rs. 8.50 crore i.e. Rs. 1,27,500/-, you are required to deposit the balance amount of stamp duty in the office of the Registrar of Companies as usual.”

4. Mr. P. Nagesh, learned counsel for the Petitioner submitted that the determination of the stamp duty on the Memorandum of Association (‘MOA’) had to be made in terms of Article 39 of Schedule IA of the Act.

The said Article reads as under:

**Article 39. Memorandum of Association of a company -**

- |  |                                     |
|--|-------------------------------------|
| (a) if accompanied by articles of association Under Sections 26, 27 and 28 of the Companies Act, 1956. | <b>Delhi</b> – Two hundred rupees.  |
| (b) if not to accompanied.   | <b>Delhi</b> – five hundred rupees. |

5. Article 10 relates to Articles of Association (‘AOA’) of a company and reads as under:

**Article 10. Articles of Association of a company –**

- |   |   |
|---|---|
| (a) When the authorized capital of the Company does not exceed one lac; | <b>Delhi</b> – 0.15% of authorized share capital with a monetary ceiling of Rs. 25 lakhs. |
|---|---|

(b) in other cases.

**Delhi - 0.15% of**  
authorized share capital with  
a monetary ceiling of Rs. 25  
lakhs.

6. In the present case, the amendment was to the MOA and not the AOA. Even the provision relating to the amendment to the AOA did not mention that stamp duty was payable on the increase in the authorized share capital. It is submitted that the Act is a fiscal statute which does not specifically mention any duty payable in respect of increase in the authorised share capital. It admits of a strict construction. The words ‘in other cases’ occurring in clause (b) of Article 10 of Schedule IA refers to the cases in which original authorized share capital exceeds Rs. one lakh at the time of incorporation and registration of the company and not to the subsequent increased authorized share capital. This distinction was clearly understood by other State Legislatures. A reference was drawn to the Article 10 of the Indian Stamp Act as amended by State legislatures of Rajasthan, Madhya Pradesh and Andhra Pradesh. For instance, Article 10 as amended by the Madhya Pradesh state legislature reads as under:

**Article 10. Articles of Association of a Company**

(a) Where the company has no  
share capital.

One thousand rupees.

(b) Where the company has  
nominal share capital **or increased**  
**share capital.**

0.15 per cent of such nominal  
**or increased share capital**  
subject to a minimum of one  
thousand rupees and a

maximum of five lakh  
rupees.

7. Article 10a in the State of Rajasthan reads as under:

**10a. Amendment in Articles of Association of a Company –**

(i) if relating to increase in authorized share capital	Half (0.5) per cent of the increased authorized capital.
(ii) in any other case.	One hundred rupees.

8. It is submitted that the order dated 11<sup>th</sup> August 2010 passed by Respondent No.4 overlooks the correct legal position and violates Article 10 of the Act as applicable in Delhi.

9. Ms. Maneesha Dhir, learned counsel for Respondents 1 and 2 on the other hand contended that the phrase ‘in other cases’ in Clause (b) of Article 10 of Schedule IA would include authorized capital exceeding Rs. 1 lakh as also increase in authorized capital. In case when stamp duty has not been paid beyond the monetary ceiling of Rs. 25 lakhs it is submitted that on a plain reading, the Petitioner was required to pay stamp duty on the increased share capital. Ms. Dhir submitted that even earlier on the increased authorized share capital up to Rs. 8.50 crores the Petitioner had paid stamp duty and therefore, it cannot refuse to pay now. Lastly, it is submitted that the Petitioner itself invited adjudication by the Collector of Stamps and was bound to respect the decision in that regard. Reliance is

placed by Ms. Dhir on the decisions in *Avinash Kaur v. Beli Ram ILR 1970 Delhi 651* and *RN Vasudeva v. Union of India 12 (1976) DLT 109*.

10. Having considered the above submissions, this Court is of the view that the Petitioner ought to succeed. The order dated 11<sup>th</sup> August 2010 of the Collector of Stamps proceeds on the footing that under Article 10 (a) and (b) of Schedule IA of the Act, stamp duty chargeable on the authorized capital of the company is 0.15% of the authorized share capital with a monetary ceiling of Rs. 25 lakhs. There is no provision for charging stamp duty on “increase” in the authorised share capital. Nevertheless Respondent No.4 has proceeded to determine the stamp duty payable on the authorized share capital as Rs. 18,75,000/-. A statute authorizing the levy of stamp duty is in the nature of a fiscal statute inasmuch as it provides for involuntary exaction of money. This cannot be done except by the authority of law. The provisions of a fiscal statute admit of strict construction. In the absence of an express provision in the Act permitting levy of stamp duty on the increase in authorised share capital, it is not possible to legally sustain the impugned demand. The legislatures in Rajasthan and Madhya Pradesh and a few other States have acknowledged the need to have specific provisions and have accordingly amended the Schedule IA of the Act providing for levy of stamp duty on the increase in the authorized share capital.

11. The decisions cited by the learned counsel for the Respondents are not relevant in the facts and circumstances of the present case. One is in the context of the Delhi Rent Control Act, 1958 and the other regarding service rules concerning allotment of government accommodation. On the other hand a Constitution Bench of the Supreme Court, in *AV Fernandez v. State of Kerala AIR 1957 SC 657*, explained the law relating to interpretation of fiscal statutes as under: (AIR @ 661)

“(I)n construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter.”

12. The Supreme Court in *Commissioner of Wealth Tax, Gujarat-III, Ahmedabad v. Ellis Bridge Gymkhana (1998) 1 SCC 384*, held as under: (SCC @ 387)

“The rule of construction of a charging section is that before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section. No one can be taxed by implication. A charging



section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all.”

13. The Articles of Association and the Memorandum of Association of a company are required to be submitted at the time of registration of the company. At that stage stamp duty is payable in terms of either Article 10 or Article 39 of the Schedule IA to the Act. Neither Article 10 nor Article 39 refers to ‘increase’ in the authorized share capital as a basis for levy of stamp duty. In the absence of a specific provision that permits the levy of stamp duty on the increase in authorized share capital, it would not be open to the Respondents to insist upon the Petitioner having to pay stamp duty for the increased authorized share capital. The fact that the Petitioner earlier paid stamp duty when the authorized share capital was increased to Rs. 8.5 crores cannot act as an estoppel against the Petitioner. Also, the mere fact that the website of the ROC indicates that stamp duty shall be 0.5% of amount on increase in the authorized share capital does not lend a legal basis for such levy, in the absence of any amendment to the Act to that effect.

14. For the aforementioned reasons, this Court is unable to approve of the decision dated 11<sup>th</sup> August 2010 of Respondent No. 4. It is directed that the ROC will now proceed to accept the Petitioner’s Form 5 and record

the increased authorized share capital without insisting on the Petitioner paying stamp duty thereon. This will however not enable the Petitioner to claim refund of any stamp duty paid earlier by it for increase in authorized share capital.

15. The writ petition and the pending application are disposed of in the above terms.

**S. MURALIDHAR, J**

**APRIL 21, 2011**

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