

M/S Khurana Brothers & Others ... vs State Of Uttarakhand & Another on 25 April, 2022

Author: Sharad Kumar Sharma

Bench: Sharad Kumar Sharma

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL
Writ Petition (M/S) No.87 of 2021

M/s Khurana Brothers & others

Vs.

.....Petitioners

State of Uttarakhand & another

.....Respondents

Mr. Siddhartha Singh, Advocate, for the petitioners.

Mr. N.S. Pundir, Deputy Advocate General, for the State of Uttarakhand.

Hon'ble Sharad Kumar Sharma, J (Oral)

The petitioners, who are three in numbers in the present writ petition, have raised their grievances as against the impugned order dated 25.09.2020, which has been passed by the respondent No.1, directing to realize the stamp duty @ 12.50%, on the auction sale of the resin, which according to the petitioners, it happens to be in contravention to the judgment of the Hon'ble Apex Court as rendered on 27.10.2010 in the matter qua the petitioners themselves.

2. The contention of the petitioners, is that on the demand of the stamp duty to be paid as per revised rate by the Government Order, later on @ 8%, which was initially reduced to 8%. The matter travelled to before this Court in Writ Petition No.8959 of 1993, M/s Newtech Varnish Udyog and Others Vs. State of Uttar Pradesh & another", and the High Court of Judicature at Allahabad, which was ceased with the matter, and after its transfer under Section 35 of the Reorganization Act, was renumbered as Writ Petition No.297 of 2002, which was dismissed by the Hon'ble Court vide its judgment dated 13.04.2004.

3. After the dismissal of the writ petition by the Division Bench of this Court, the petitioner, therein, which included the present petitioner also, who was a petitioner of Writ Petition No.902 of 2001, "M/s Khurana Brothers Vs. State of Uttaranchal & others", had preferred a review petition, before the Division Bench of this Court, being Review Petition No.2345 of 2004, which was allowed by the judgment and order dated 27.12.2007, holding that the petitioner would not be liable for stamp duty @ 12.50%, as per Article 18 of the Stamp Act.

4. As against the judgment of review dated 27.12.2007, the matter travelled before the Hon'ble Apex Court at the behest of the State by filing an SLP No.11352 of 2008, "State of Uttarakhand Vs. M/s Khurana Brothers", which was later on assigned with the Civil Appeal No.5876 of 2009. The Hon'ble Apex Court vide its judgment dated 27.10.2010, after elaborately considering the impact as to resin, which has been sold by way of the tendering process, will fall to be an immovable property and drawing its implication of conveyance as defined under Section 2 (10) of the Stamp Act, it was held that it will be treated as to be movable property, and the stamp which would be levied on the same, would be as per Article 23 (1) (b) of the Stamp Act, and would not be chargeable under Article 18 of the Stamp Act. Paragraph Nos.12 and 13, of the judgment of the Hon'ble Apex Court is extracted hereunder:-

"12. The expression document is not defined in the Stamp. Act. However, the General Clauses Act, 1897 defines document' as under:

"S.3(18). document shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter."

13. Under Section 2(10), inter alia, every document by which movable property is transferred is 'conveyance'. Does the contract of sale for crude resin entered into between the parties amount to transfer of movable property? In our opinion, it does. In the contract under consideration, all essential conditions of transfer of movable property are satisfied. By this document right in auctioned lot of crude resin has been created in favour of the writ petitioner. Correspondingly, the State Government is under obligation to deliver the quantity of crude resin specified in the document. Pertinently, clause 1(B) provides that resin sold will remain at purchaser's risk from the date of acceptance of its bid and seller will not be responsible for any loss and damage which may occur thereto from any cause whatsoever. The document read as a whole leaves no manner of doubt that property in the auctioned lot of crude resin vested in the purchaser as a result of the subject contract and, thus amounts to transfer of movable property. Even if the document dated March 24, 2001 is treated as an agreement to sell, in view of the acceptance letter dated April 7, 2001 whereby the writ petitioner has been informed that public auction is accepted in its name and that it must arrange for lifting of the auctioned resin within 60 days from the issuance of this letter, it is very clear that the contract of sale dated March 24, 2001 read with the letter dated April 7, 2001 amounts to 'conveyance' within the meaning of Section 2(10) and is chargeable to stamp duty under Article 23, Schedule I-B as admittedly there is no exemption from payment of stamp duty in respect of such conveyance under Article 62."

5. This judgment of the Hon'ble Apex Court had attained its finality, wherein it has been laid down therein, that the stamp duty which would be chargeable would be on the basis of the Article 23 of the Schedule 1 (b) of the Stamp Act. Despite of the said judgment still subsisting in the eyes of law, the respondents in the process of auctioning of resin, which they have resorted to on the basis of the invitation of bids, a concluded contract was supposed to be executed between the petitioner and the respondents, but while executing the contract by the impugned order, they have yet again imposed

the stamp duty, which has been directed to be made payable, as per Article 18 of the Stamp Act, which is in contravention to the principles already settled by the Hon'ble Apex Court in its judgment dated 27.10.2010, the action hence would be contemptuous too.

6. If the analysis, which has been made in the impugned order of 25.09.2020, which has been put to challenge by the petitioner, which was a decision taken in compliance of the direction issued by the coordinate Bench of this Court on 04.09.2019 in Writ Petition No.421 of 2012, "M/s Khurana Brothers and another Vs. State of Uttarakhand and anothers", in fact if the conclusion, which has been arrived at by the Principal Secretary, vide its decision dated 25.09.2020, the logic for imposition of the stamp duty @ 12.50% on the sale of risen, in fact once it has been held to be an immovable property by the Hon'ble Apex Court; holding it that it would fall under Article 23 of the Stamp Act. The conclusion derived, therein, by respondent No.1, by imposing a stamp duty as per schedule 1 (b) (ka) of Article 18, directing thereof to impose the stamp duty @ 12.50%, would be in apparent contravention to the settled principles of the Hon'ble Apex Court as laid down by the judgment of 27.10.2010.

7. In that view of the matter, since the impugned order itself apparently happens to be in contravention to the ratio laid down by the Hon'ble Apex Court, and the imposition of the stamp duty has had to be made as per Article 23 of Schedule 1(b) of the Stamp Act, and not as per Article 18 (1) (b) of the Stamp Act, which has been attracted by the impugned order for imposition of the stamp on the sale of the resin.

8. This Court is of the view that the impugned order dated 25.09.2020, imposing the stamp duty @ 12.50% on the sale of resin/lisa, is in violation of the directives of the Hon'ble Apex Court dated 27.10.2010.

9. Hence, the writ petition would stand allowed. The impugned order dated 25.09.2020, would stand quashed, to the extent that it runs contrary to the judgment of the Hon'ble Apex Court dated 27.10.2010, and for the sale of resin, which is a subject matter in question, in the present writ petition, in pursuance to the auction proceeding which was conducted by the respondents. The same would be levied as per the directives of the Hon'ble Apex Court, as contained in paragraph nos.12 and 13, of the judgment, which is extracted above.

10. By way of a writ of mandamus, the respondents are directed that the stamp duty would be chargeable on the sale of lisa as per Article 23 of the Schedule 1 (b), and not as per Article 18 of the Stamp Act, which has been imposed upon by the respondents by the impugned order.

11. Hence, the impugned order would stand modified to the extent that the stamp duty which would be made liable to be paid by the petitioner would be on the basis of the implications of Article 23

(b) and not as per Article 18 of the Stamp Act.

12. Hence, the writ petition is allowed. The respondents are directed to accordingly modify the impugned order dated 25.09.2020, and impose the stamp duty as per the covenants and directives

of the judgment of the Hon'ble Apex Court dated 27.10.2020, by imposing the stamp duty on the transaction in question on the basis of the rates prescribed under Article 23 of Schedule 1 (b) of the Stamp Act. The amount which has been deposited by the petitioner in compliance of the interim order passed by this Court, would be accordingly adjusted after the passing of the fresh order and the excess amount, if any, then to what would be levied as per Article 23 of Schedule 1(b) of the Stamp Act, would be ensured to be remitted back to the petitioner. In case, if it is in excess to the amount within a period of two months from the date of the production of a certified copy of this judgment.

13. In pursuance to the interim order dated 13.01.2021, this Court has directed the petitioner to deposit 2% of the stamp duty, as settled by the Hon'ble Apex Court before the respondents, which the petitioner has complied with. However, the balance amount @ 10.50% was directed to be deposited in the Registry of this Court.

14. In view of the decision which has been rendered today. The Registry is directed to refund the balance amount @ 10.50 which has been directed to be deposited by the petitioner before the Registry of this Court, along with interest, if any, if it has accrued on the deposit.

(Sharad Kumar Sharma, J.) 25.04.2022 NR/