



HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

D. B. Special Appeal (Writ) No. 1063/2019

In

S. B. Civil Writ Petition No. 7904/2018

Himachal Futuristic Communications Limited, through its Authorised Representative, Anil Kumar Jain, and having its Registered Office at 8, Electronics Complex, Chambaghat, Solan, Himachal Pradesh-173 213.

-----Appellant

Versus

1. State of Rajasthan, through its Secretary, Revenue, Department, Rajasthan, Secretariat, Jaipur.

2. The Collector (Stamps), Jaipur Circle-III, Collectorate, Bani Park, Jaipur, Rajasthan.

3. Sub Registrar, Sanganer-First, Jaipur.

-----Respondents

For Appellant	:	Mr. Bishwajit Bhattacharya Senior Advocate through Video Conferencing. Mr. Anuroop Singhi Advocate with Mr. Devansh Sharma Advocate through Video Conferencing.
For Respondents	:	Major R.P. Singh, Additional Advocate General assisted by Mr. Jaivardhan Singh Shekhawat Advocate through Video Conferencing.

HON'BLE MR. JUSTICE MANINDRA MOHAN SHRIVASTAVA

HON'BLE MR. JUSTICE BIRENDRA KUMAR

Judgment

REPORTABLE

29/07/2022

By the Court:(Per Hon'ble Manindra Mohan Shrivastava,J.)

This appeal is directed against order dated 07.06.2019 passed by the learned Single Judge, whereby, writ petition filed by the appellant-writ petitioner has been dismissed.



2. The appellant filed writ petition on pleadings inter alia that the appellant-company, registered under the Companies Act, 1956 at Solan, Himachal Pradesh and engaged in the business of manufacturing of telecom equipments, optical fibre cables and also providing telecom turnkey services, entered into an arrangement and amalgamation of another company namely, Sunvision Engineering Company Private Limited. Petition under Sections 391 and 394 of the Companies Act, 1956 was submitted before the High Court of Himachal Pradesh for sanctioning the scheme of arrangement and amalgamation of Sunvision Engineering Company Private Limited with the appellant-company. Vide order dated 05.01.2011, the High Court of Himachal Pradesh sanctioned the scheme. Transferor and Transferee companies were allowed to file copy of the order with the Registrar of Companies of the State of Punjab, Chandigarh and Himachal Pradesh and the transferor company was dissolved without process of winding up.

3. Further pleading was that as a result of sanction of the scheme of arrangement and amalgamation of Sunvision Engineering Company Private Limited with the appellant-company, the assets and properties of Sunvision Engineering Company Private Limited were registered with the appellant-company and equity shares were also allotted to the shareholders of Sunvision Engineering Company Private Limited in the ratio of 47 equity shares of value of Re. 1/- for every one share of Sunvision Engineering Company Private Limited having face value of Rs. 10/-. In this manner, 47 crore equity shares were issued to the shareholders of Sunvision Engineering Company Private Limited,



which was holding one crore equity shares of the said company. Sunvision Engineering Company Private Limited also owned 14 parcels of land situated in the State of Rajasthan. These assets of Sunvision Engineering Company Private Limited were also transferred by virtue of order of the High Court of Himachal Pradesh in favour of the appellant-company, whereafter, the appellant-company approached Jaipur Development Authority (for short 'JDA') on 09.01.2017 seeking mutation of aforementioned 14 parcels of land situated at Shiv Nagar-II/Ramnagariya, Jaipur in the revenue records. JDA sent the matter for legal examination, whereafter, the State Government, having examined the documents of amalgamation, formed an opinion that there was deficit of stamp duty. A demand was, therefore, raised against the appellant-company by issuing a notice under Section 51 of the Rajasthan Stamp Act, 1998 (for short 'the Stamp Act of 1998') by registering the proceedings against the appellant-company. The appellant-company in that proceedings submitted that the stamp duty as payable for valuation of 14 parcels of land situated in the State of Rajasthan of which the appellant-company became owner by virtue of sanction order of the High Court of Himachal Pradesh, alone were required to be assessed for determination of stamp duty. A representation was submitted in response to notice dated 22.06.2017. The Deputy Registrar, after coming to the conclusion that as the valuation of 14 parcels of land was not possible there being no separate demarcation which would enable such valuation, vide order dated 07.03.2018, held the appellant-company liable for payment of a sum of Rs. 25 crores as stamp duty with the mutation





of the records of JDA within 15 days, failing which action was contemplated in terms of Section 56 of the Stamp Act of 1998. Such a demand was raised on valuation arrived at Rs. 12,73,29,36,970/- of the entire document, i.e., the order passed by the High Court of Himachal Pradesh sanctioning the scheme of amalgamation and transfer of the assets of Sunvision Engineering Company Private Limited to the appellant-company. Aggrieved by the said order, the appellant-company filed writ petition before this Court.

4. Appellant's claim and relief sought in the writ petition were opposed by the State on the pleadings and the submissions that the appellant-company had submitted application dated 14.06.2017 before the DIG, Stamps for calculation and deposit of stamp duty on the basis of valuation of amalgamation order dated 05.01.2011 passed by the High Court of Himachal Pradesh. The competent authority assessed the amount of stamp duty payable in accordance with the provisions of the Stamp Act of 1998 by taking entire document, i.e., order sanctioning the scheme of amalgamation as a whole, which not only resulted in transfer of immovable properties, i.e., 14 parcels of land situated in the State of Rajasthan which were owned by Sunvision Engineering Company Private Limited but also taking into consideration the valuation of the shares, which were transferred as a consequence of order passed by the High Court of Himachal Pradesh. As the appellant had not paid any stamp duty in respect of the valuation of transferred shares to the State of Himachal Pradesh or to any other State, the appellant was liable to pay stamp duty on the valuation of the entire document.



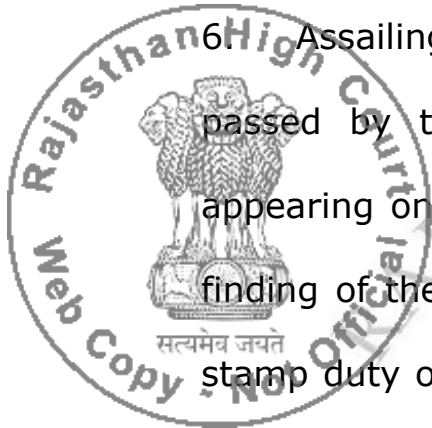
An objection to the maintainability of the writ petition was also raised on the ground of existence of an efficacious alternative remedy by submitting that writ petition was liable to be dismissed as there existed an efficacious alternative statutory remedy of filing revision petition under Section 65 of the Stamp Act of 1998 before the Chief Controlling Revenue Authority and, therefore, without availing the efficacious alternative remedy, writ petition was not maintainable.

5. Though the learned Single Judge overruled the objection to the maintainability of the writ petition on the ground of existence of alternative remedy, on merits, it was held that under the provisions of the Stamp Act of 1998, order of amalgamation passed by the High Court of Himachal Pradesh, being an instrument as defined under Section 2(xix) of the Stamp Act of 1998, was liable to be charged with stamp duty in terms of Section 3(b) of the Stamp Act of 1998 even though the instrument is executed out of the State of Rajasthan as it relates to the properties situated in the State of Rajasthan. It was further held that provisions of the Stamp Act of 1998 not only apply in relation to properties situated in the State of Rajasthan, but it extends to the valuation of the instrument as a whole chargeable with duty. As such, the market value of the instrument is required to be assessed in terms of Section 2(xxiii) of the Stamp Act of 1998. Learned Single Judge, referring to provisions contained in Sections 20 and 21 of the Stamp Act of 1998, held that the instrument, which is chargeable in any part of India with duty under the Indian Stamp Act, 1899 also becomes chargeable with higher rate of duty in the State of Rajasthan and,



therefore, the State of Rajasthan is entitled to claim not only stamp duty in respect of the valuation of the entire instrument but also at the rate prescribed under the Stamp Act of 1998. The argument that as the instrument has been registered in other State, therefore, duty cannot be charged by the authorities in the State of Rajasthan on the said instrument, was repelled.

6. Assailing the legality and validity of the impugned order passed by the learned Single Judge, learned Senior Advocate appearing on behalf of the appellant contended before us that the finding of the learned Single Judge that for the purpose of levy of stamp duty on the instrument, which has been executed out of the State of Rajasthan, provisions contained in the Stamp Act of 1998 required stamp duty to be paid in respect of the valuation of the entire instrument, is contrary to the provisions contained in Section 3 read with Section 21 of the Stamp Act of 1998. Elaborating his submission, learned Senior Advocate also argued that while recording a finding against the appellant, learned Single Judge has completely ignored the territorial nexus as provided under Section 1, sub-section (2); Section 3, sub-section (b); Section 21, sub-section (1) and Section 21, sub-section (2) of the Stamp Act of 1998. According to him, the liability for payment of stamp duty, when the document is submitted in the State of Rajasthan would be confined only to the valuation of the immovable properties, namely, 14 parcels of land situated in the State of Rajasthan. The instrument having been executed outside the State, the appellant-company and the dissolved company namely Sunvision Engineering Company Private Limited both situated and having registered





offices outside the State of Rajasthan and the transfer of shares taking place by virtue of the order passed by the High Court of Himachal Pradesh, valuation of shares transferred under the scheme of amalgamation could not be included for the purpose of levy of the stamp duty.

7. Further submission of learned Senior Advocate is that the learned Single Judge has erroneously assumed that the State of Himachal Pradesh has a law that charges stamp duty on amalgamation, whereas, no such law has been placed by the respondents before the Court. On such erroneous assumption, it is contended, the learned Single Judge has erroneously concluded that the State of Himachal Pradesh defaulted to recover stamp duty from the appellant-company and on that basis recorded perverse finding that the default committed by State of Himachal Pradesh can be rectified by the State of Rajasthan by recovering the stamp duty in respect of the instrument. He would further submit that in the absence of there being any local laws prevailing in the State of Himachal Pradesh levying stamp duty on the instrument, the appellant-company is not liable for payment of stamp duty on the valuation of shares transferred under the scheme of amalgamation, but under the statutory scheme of the Stamp Act of 1998, only the difference of duty, which pertains to the market value of the properties situated in the State of Rajasthan, is payable under the law. Learned Senior Advocate would further stressed on the submission that as the instrument is not chargeable in the State of Himachal Pradesh, Sections 20, 23, 90 and 91 of the Stamp Act of 1998 are inapplicable. Therefore, in the absence of territorial





nexus, levy of stamp duty on the entire instrument, which includes the valuation of the transferred shares, is bad in law. Relying upon the judgments of the Hon'ble Supreme Court in the cases of **Collector of Central Excise, Ahmedabad Vs. Orient Fabrics (P) Ltd., (2004) 1 SCC 597** and **State of W.B. Vs. Kesoram Industries Ltd. & Others, (2004) 10 SCC 201**, it has been contended that the power to tax cannot be inferred by implication and in order to levy stamp duty, there must be clear charging section empowering the State to levy stamp duty. In case an instrument is executed out of the State of Rajasthan, stamp duty is leviable only in respect of those properties, which are situated in the State of Rajasthan which alone bear territorial nexus, levy of stamp duty beyond the valuation of 14 parcels of land situated in the State of Rajasthan is not permissible under the Stamp Act of 1998.

8. Per contra, learned Additional Advocate General appearing on behalf of the respondents would submit that the learned Single Judge has rightly held that once the document is covered by the definition of instrument as defined under Section 2(xix) of the Stamp Act of 1998, the instrument having been submitted for mutation of records in respect of 14 parcels of land, is chargeable to stamp duty upon valuation of the entire document. He would further submit that the provisions relating to payment of difference of duty as contemplated under Section 21 of the Stamp Act of 1998 would be applicable only when the stamp duty has been paid in the State where the instrument was executed. However, as the present is not a case where the stamp duty was paid in the State of



Himachal Pradesh or in any State, provisions of Section 21 of the Stamp Act of 1998 cannot be taken recourse to by the appellant to contend that the appellant is liable to pay stamp duty only on the basis of valuation of 14 parcels of land situated in the State of Rajasthan. Learned Additional Advocate General argued that as per Section 3 of the Stamp Act of 1998, not only the instruments executed in the State of Rajasthan but also the instruments executed out of the State of Rajasthan on or after the date of coming into force the Stamp Act of 1998 are chargeable with duty. As the instrument-in-question is not covered under any of the clauses of proviso to Section 3 of the Stamp Act of 1998, the same is chargeable to stamp duty and liability could not be disputed on the ground that the instrument is executed outside the State of Rajasthan. In support of his submissions, learned Additional Advocate General has placed reliance upon the judgments of the Hon'ble Supreme Court in the cases of **Hindustan Lever & Another Vs. State of Maharashtra & Another (2004) 9 SCC 438** and **New Central Jute Mills Co. Ltd. & Others Vs. State of West Bengal & Others AIR 1963 SC 1307**.

9. We have heard learned counsel for the parties, bestowed our serious consideration to their submissions and perused the records.

10. Stamp duties on the instruments or transactions other than those mentioned in Entry 91 of List I-Union List are levied by the State as per Entry 63 of List II-State List of Seventh Schedule of the Constitution of India.

The provisions other than those relating to rates of stamp duty fall within the legislative power of both the Union and the



States by virtue of Entry 44 of List III-Concurrent List of Seventh Schedule of the Constitution of India.

11. By way of adaptation of the Indian Stamp Act, 1899 (Act No. 2 of 1899), The Rajasthan Stamp Law (Adaptation) Act, 1952 (No. VII of 1952) was enacted in the State of Rajasthan, which provided for levy of stamp duty until it was repealed by the Rajasthan Stamp Act, 1998 (Act No. 14 of 1999). As the preamble of the Stamp Act of 1998 states, it is an Act to consolidate and amend the law relating to stamps in the State of Rajasthan.

Section 1, sub-section (2) of the Stamp Act of 1998 provides that it extends to whole of the State of Rajasthan. Section 3 of the Stamp Act of 1998 provides for chargeability of instrument with stamp duty as below:

"3.Instrument chargeable with duty - Subject to the provisions of this Act and the exemptions contained in the Schedule, the following instruments shall be chargeable with duty of the amount indicated in the Schedule as the proper duty therefor respectively, that is to say,-

(a) every instrument mentioned in that Schedule, which, not having been previously executed by any person, is executed in the State on or after the date of commencement of this Act;

(b) every instrument mentioned in that Schedule, which, not having been previously executed by any person, is executed out of the State on or after the said date, relates to any property situate, or to any matter or thing done or to be done in the State and is received in the State:

Provided that no duty shall be chargeable in respect of,-

(i) any instrument executed by or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;

(ii) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act, 1958 (Act No. 44 of 1958), as amended by subsequent Acts.



[3-A, Certain instruments chargeable with surcharge.- [(1) All instruments chargeable with duty under section 3 read with Schedule to the Act, shall be chargeable with surcharge at such rate not exceeding **10 percent** of the duty chargeable on such instruments under section 3 read with Schedule to the Act, as may be notified by the State Government, for the purpose of the development of basic infrastructure facilities such as rail or road transportation system, communication system, power distribution system, sewerage system, drainage system or any other such public utilities serving any area of the State and for financing Municipalities and Panchayati Raj Institutions.]]

(2) The surcharge chargeable under sub-section (1) shall be in addition to any duty chargeable under section 3.

(3) Except as otherwise provided in sub-section (1), provisions of this Act shall so far as may be apply in relation to the surcharge, chargeable under sub-section (1) as they apply in relation to the duty chargeable under section 3.]

[(4) Save as provided in sub-section (3), the State Government may make rules for collection of surcharge leviable under this section and for regulating the duties and remuneration of the person through whom surcharge is collected.]

[3-B. Surcharge for conservation and propagation of cow and its progeny.- [(1) All instruments chargeable with duty under section 3 read with Schedule to the Act, shall be chargeable with surcharge at such rate not exceeding **10 percent** of the duty chargeable on such instruments under section 3 read with Schedule to the Act, as may be notified by the State Government, for the purpose of conservation and propagation of cow and its progeny.]]

(2) The surcharge chargeable under sub-section (1) shall be in addition to any duty chargeable under section 3 and any surcharge chargeable under section 3-A.

(3) Except as otherwise provided in sub-section (1), provisions of this Act shall so far as may be apply in relation to the surcharge, chargeable under sub-section (1) as they apply in relation to the duty chargeable under section 3.

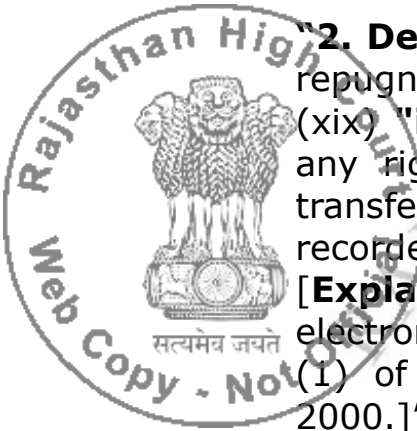
[(3A) Save as provided in sub-section (3), the State Government may make rules for collection of surcharge leviable under this section and for regulating the duties and remuneration of the person through whom surcharge is collected.]

(4) The surcharge collected under this section shall be earmarked and utilized for the purpose of conservation and propagation of cow and its progeny in the State.]”



12. The instruments as specified in Section 3(a) and 3(b) of the Stamp Act of 1998 are those which are chargeable with duty of the amount indicated in the Schedule appended to the Stamp Act of 1998.

For the purpose of the Act, "Instrument" has been defined as below:



"2. Definitions.- In this Act, unless there is something repugnant in the subject or context,
(xix) **"instrument"** includes every document by which any right or, liability is, or purports to be, created, transferred, limited, extended, extinguished, or recorded;
[Explanation.- The term "document" also includes any electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000.]"

Further, "conveyance" has been defined under Section 2(xi) of the Stamp Act of 1998 as below:

"2. Definitions.- In this Act, unless there is something repugnant in the subject or context,
(xi) **"conveyance"** includes,-
(i) a conveyance on sale,
(ii) every instrument,
(iii) every decree or final order of any civil court,
[(iv) every order made under sections 232, 233 or 234 of the Companies Act, 2013 (Central Act No. 18 of 2013) or section 44-A of the Banking Regulation Act, 1949 (Central Act No. 10 of 1949); and]
(v) sale of air rights,
(vi) sale/consent related to below surface rights, by which property, whether movable or immovable, or any estate or interest in any property is transferred to, or vested in, any other person, intervivos, and which is not otherwise specifically provided for by the Schedule;"

13. At Serial No. 21 of the Schedule appended to the Stamp Act of 1998, conveyance as defined under Section 2(xi) is chargeable with stamp duty as provided therein, which is extracted hereinbelow:

S.No.	Description of Instrument	Proper Stamp Duty
21.	Conveyance as defined by section 2 (xi),—	
	[(i)if relating to immovable property.	Eleven percent of the market value of the



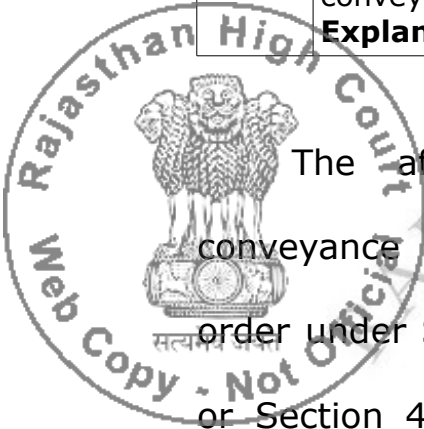
	(ii) if relating to movable property. [(iii) if relating to the order under sections 232, 233 or 234 of the Companies Act, 2013 (Central Act No. 18 of 2013) or section 44-A of the Banking Regulation Act, 1949 (Central Act No. 10 of 1949) in respect of amalgamation, demerger or reconstructions of a company.]	property.] Half (0.5) percent of the market value of the property. [Subject to a maximum of twenty five crores rupees- (i) an amount equal to four percent of the aggregate amount comprising of the market value of share issued or allotted or cancelled in exchange of or otherwise, or on the face value of such shares, whichever is higher and the amount of consideration, if any paid for such amalgamation, demerger or reconstruction, or (ii) an amount equal to four percent of the market value of the immovable property situated in the State of Rajasthan of the transferor company, whichever if higher.]
	[(iv) if relating to Transferable Development Rights (TDR)	Five percent on the market value of the Transferable Development Rights equal to the market value of the corresponding portion of the property leading to such Transferable Development Rights, which is the subject matter of conveyance; or consideration for such conveyance; whichever is higher.
	Exemption.- Assignment of copy right by entry made under the Indian Copyright Act, 1957 (Act No. 14 of 1957) Explanation.- (i) For the purpose of this article an agreement to sell an immovable property or an irrevocable power of attorney or any other instrument executed in the course of conveyance or lease e.g. allotment letters, patta, licence etc. shall, in case of transfer of the possession of such property before, at the time of or after the execution of any such instrument, be deemed to be a conveyance and the stamp duty thereon	



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shall be chargeable accordingly : Provided that the provisions of section 51 shall be applicable mutatis mutandis to such agreement or power of attorney or instruments as are applicable to a conveyance: Provided further that the stamp duty already paid on such agreement or power of attorney or instrument shall at the time of the execution of a conveyance or lease in pursuance of such instruments subsequently, be adjusted towards the total amount of duty chargeable on the conveyance or lease. Explanation.- (ii) [xxx]	
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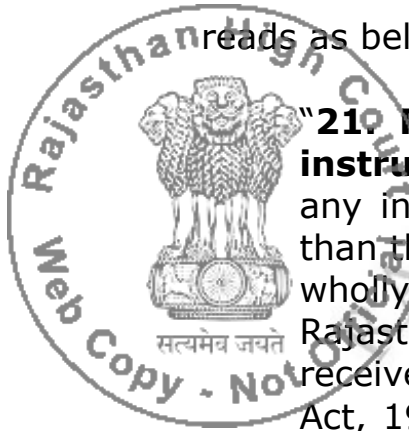
The aforesaid provision thus clearly provides that a conveyance relating to immovable property, movable property, order under Sections 232, 233 or 234 of the Companies Act, 2013 or Section 44-A of Banking Regulations Act, 1949 in respect of amalgamation, demerger or reconstruction of a company is also chargeable to stamp duty at different rates prescribed in the provision itself. Where the instrument is a conveyance relating to order under the provisions of the Companies Act in respect of amalgamation, demerger or reconstruction of a company, it is provided that subject to a maximum of 25 crore rupees, an amount equal to 4% of the aggregate amount comprising of the market value of shares issued or allotted or cancelled in exchange of or otherwise, or on the face value of such shares, whichever is higher and the amount of consideration, if any paid for such amalgamation, demerger or reconstruction or an amount equal to 4% of the market value of the immovable property situated in the State of Rajasthan of the transferor company, whichever is higher, is leviable with stamp duty.

14. Sections 17 and 18 of the Stamp Act of 1998 make the provisions with regard to time of stamping the instrument executed



in the State or executed out of the State respectively. Section 20 of the Stamp Act of 1998 makes provision with regard to payment of duty on certain instruments liable to increased duty in the State of Rajasthan whereas Section 21 of the Stamp Act of 1998 provides for payment of difference of duty on copies of instruments registered out of the State. Section 21 of the Stamp Act of 1998

reads as below:



"21. Payment of difference of duty on copies of instruments registered out of the State-

(1) Where any instrument is registered in any part of India other than the State of Rajasthan and such instrument relates, wholly or partly to any property situate in the State of Rajasthan, the copy of such instrument shall, when received in the State of Rajasthan under the Registration Act, 1908 (Act No. 16 of 1908), be liable to be charged with the difference of duty as on the original instrument.

(2) The difference of duty shall be calculated having regard to, the extent of property situated in the State of Rajasthan and the proportionate consideration or market value of such extent of property.

(3) The party liable to pay duty on the original instrument shall upon receipt of notice from the registering officer, pay the difference of duty within the time allowed by such registering officer.

(4) Where deficiency in duty paid noticed from the copy of any instrument, the Collector may *suo motu* or on a reference from any court or any registering officer, require the production of the original instrument before him within the period specified by him for the purpose of satisfying himself as to the adequacy of the duty paid thereon, and the instrument so produced before the Collector, shall be deemed to have produced or come before him in the performance of his functions and the provisions of sections 35 and 51 shall, mutatis mutandis apply.

(5) In case the original instrument is not produced within the period specified by the Collector, he may require the payment of deficit duty, if any, together with penalty under section 44 on the copy of the instrument, within such time as may be prescribed."

15. The Stamp Act of 1998 is a fiscal statute and is, therefore, required to be interpreted strictly. In Constitution Bench Judgment of the Hon'ble Supreme Court in the case of **State of W.B. Vs.**



Kesoram Industries Ltd. & Others (supra), the principle of construction with regard to tax legislation was stated as below:

"**106.** The judicial opinion of binding authority flowing from several pronouncements of this Court has settled these principles: (i) in interpreting a taxing statute, equitable considerations are entirely out of place. Taxing statutes cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency; (ii) 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; and (iii) if the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject. There is nothing unjust in the taxpayer escaping if the letter of the law fails to catch him on account of legislature's failure to express itself clearly. (See Justice G.P. Singh, *ibid.*, pp.638-39)."

16. In another judgment in the case of **Collector of Central Excise, Ahmedabad Vs. Orient Fabrics (P) Ltd. (supra)**, Their Lordships in the Hon'ble Supreme Court restated the well settled principle with regard to construction of taxing statute as below:

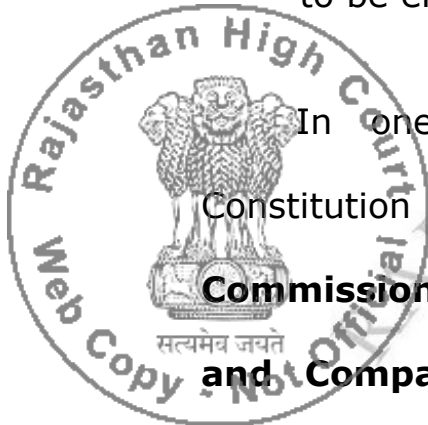
"**6.** A perusal of the said provision shows that the breach of the provision of the Act has not been made penal or an offence and no power has been given to confiscate the goods. It only provides for application of the procedural provisions of the Central Excises and Salt Act, 1944 and the Rules made thereunder. It is no longer *res integra* that when the breach of the provision of the Act is penal in nature or a penalty is imposed by way of additional tax, the constitutional mandate requires a clear authority of law for imposition for the same. Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. The authority has to be specific and explicit and expressly provided. The Act created liability for additional duty for excise, but created no liability for any penalty. That being so, the confiscation proceedings against the respondents were unwarranted and without authority of law."

17. The Stamp Act of 1998, being a fiscal statute, its applicability is restricted to the scheme of the Act. In the case of **Hameed**

**Joharan (Dead) & Others Vs. Abdul Salam (Dead) by LRs &**

Others (2001) 7 SCC 573, it was held as below:

"38. Turning attention on to Section 2(15) read with Section 35 of the Indian Stamp Act, be it noted that the Indian Stamp Act, 1899 (Act 2 of 1899) has been engrafted in the statute-book to consolidate and amend the law relating to stamps. Its applicability thus stands restricted to the scheme of the Act. It is a true fiscal statute in nature, as such strict construction is required to be effected and no liberal interpretation....."



In one of the recent judicial pronouncement by the Constitution Bench of the Hon'ble Supreme Court in the case of

Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar

and Company & Others (2018) 9 SCC 1, the principles

applicable were summarised as below:

"55. There is abundant jurisprudential justification for this. In the governance of rule of law by a written Constitution, there is no implied power of taxation. The tax power must be specifically conferred and it should be strictly in accordance with the power so endowed by the Constitution itself. It is for this reason that the courts insist upon strict compliance before a State demands and extracts money from its citizens towards various taxes. Any ambiguity in a taxation provision, therefore, is interpreted in favour of the subject/assessee. The statement of law that ambiguity in a taxation statute should be interpreted strictly and in the event of ambiguity the benefit should go to the subject/assessee may warrant visualising different situations. For instance, if there is ambiguity in the subject of tax, that is to say, who are the persons or things liable to pay tax, and whether the Revenue has established conditions before raising and justifying a demand. Similar is the case in roping all persons within the tax net, in which event the State is to prove the liability of the persons, as may arise within the strict language of the law. There cannot be any implied concept either in identifying the subject of the tax or person liable to pay tax. That is why it is often said that subject is not to be taxed, unless the words of the statute unambiguously impose a tax on him, that one has to look merely at the words clearly stated and that there is no room for any intendment nor presumption as to tax. It is only the letter of the law and not the spirit of the law to guide the interpreter to decide the liability to tax ignoring any amount of hardship and



eschewing equity in taxation. Thus, we may emphatically reiterate that if in the event of ambiguity in a taxation liability statute, the benefit should go to the subject/assessee. But, in a situation where the tax exemption has to be interpreted, the benefit of doubt should go in favour of the Revenue, the aforesaid conclusions are expounded only as a prelude to better understand jurisprudential basis for our conclusion. We may now consider the decisions which support our view.”

18. The principle underlying the aforesaid judicial pronouncements makes legal position well settled and clear that the law on the subject of stamps is altogether a matter of *positive juris*. An Act, in order to impose a tax, must be clearly expressed. A tax shall not be imposed, unless the language imposing the duty is clear and unambiguous.

19. Keeping in forefront the broad principle of interpretation of a fiscal statute, we shall now analyse the statutory scheme as engrafted in various provisions, referred to hereinabove, under the Stamp Act of 1998 to adjudicate the controversy involved in the present petition.

20. While Section 1, sub-section (2) of the Stamp Act of 1998 provides territorial application of the Stamp Act of 1998, i.e., within the State of Rajasthan, Section 3 of the Stamp Act of 1998 provides for levy of stamp duty not only on those instruments specified in the Schedule, with the amount of the duty indicated therein, which are executed in the State on or after the date of commencement of the Stamp Act of 1998 but also provides for levy of stamp duty on instruments executed outside the State.

Section 3 of the Stamp Act of 1998 opens with the expression, “Subject to the provisions of this Act”, which makes it clear that chargeability with duty would be subject to other provisions of the



Stamp Act of 1998. Further, such levy is subject to the exemptions contained in the Schedule.

As far as instrument mentioned in Schedule appended to the Stamp Act of 1998, which, not having been previously executed by any person, is executed out of the State on or after the commencement of the Stamp Act of 1998, as provided under sub-section (b) of Section 3 of the Stamp Act of 1998, such an instrument executed outside the State would be chargeable to stamp duty when the instrument relates to any property situated or to any matter or thing done or to be done in the State and is received in the State.

Literal interpretation of the provision contained in Section 3(b) of the Stamp Act of 1998, on its fair and reasonable construction, would clearly mean that an instrument mentioned in the Schedule, executed outside the State of Rajasthan, would be chargeable with duty when it bears a territorial nexus. It is not that every instrument as specified in the Schedule appended to the Stamp Act of 1998, executed outside the State, becomes chargeable to stamp duty, but only those relating to any property situated in the State or relating to any matter or thing done or to be done in the State and received in the State.

Instruments which have been executed outside the State, which otherwise bear territorial nexus as specified in Section 3(b) of the Stamp Act of 1998, are required to be stamped within three months if the instruments have been first received in the State of Rajasthan, as provided under Section 18 of the Stamp Act of 1998.



21. Section 21 of the Stamp Act of 1998 further provides for payment of difference of duty on copies of instruments registered out of the State as quoted hereinabove. It provides that when an instrument is registered in any part of India other than the State of Rajasthan and such instrument relates, wholly or partly to any property situated in the State of Rajasthan, the copies of such instrument, when received in the State of Rajasthan under the Registration Act, 1908, shall be liable to be charged with the difference of duty as on the original instrument. It further provides that the difference of duty shall be calculated having regard to the extent of property situated in the State of Rajasthan and the proportionate consideration or market value of such extent of property. The aforesaid provisions contained in sub-section (1) and sub-section (2) of Section 21 of the Stamp Act of 1998 when read with provisions contained in Section 3 of the Stamp Act of 1998, expressly provides for levy of stamp duty on an instrument executed outside the State of Rajasthan to the extent provided therein. Levy of stamp duty on instrument executed outside the State of Rajasthan is restricted according to the statutory scheme of Sections 3 and 21 of the Stamp Act of 1998 and not beyond that.

22. Section 3 of the Stamp Act of 1998 is the charging section providing for chargeability of instrument with duty. The taxing event which attracts liability for payment of stamp duty on instrument which is executed in the State of Rajasthan is materially different from the taxing event where instrument is executed out of the State of Rajasthan. While sub-section (a) of Section 3 of the Stamp Act of 1998 deals with instrument executed within the State



of Rajasthan, sub-section (b) of Section 3 of the Stamp Act of 1998 makes provision regarding levy of stamp duty on instrument executed outside the State of Rajasthan.

23. At this stage, it would be relevant and profitable to explain taxing event, which lies at the core of every tax legislation.

In the case of **Goodyear India Ltd. & Others Vs. State of Haryana & Another, (1990) 2 SCC 71**, Their Lordships in the Hon'ble Supreme Court explained taxing event as below:

"15. It is well settled that what is the taxable event or what necessitates taxation in an appropriate statute, must be found out by construing the provisions. The essential task is to find out what is the taxable event. In what is considered to be indirect tax, there is a marked distinction between the consequence of manufacture and the consequence of sale."

Expression "taxing event" was further elaborated as below:

"26. It is well settled that the main test for determining the taxable event is that on the happening of which the charge is affixed. The realisation often is postponed to further date. The quantification of the levy and the recovery of tax are also postponed in some cases. It is well settled that there are three stages in the imposition of tax. There is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment, that ex hypothesi has already been fixed. But assessment particularises the exact sum which a person is liable to pay. Lastly comes the method of recovery if the person taxed does not voluntarily pay. Reference may be made to the observations of Lord Dunedin in *Whitney v. IRC* 1926 AC 37, 52 and of the Federal Court in *Chatturam v. CIT* 15 ITR 302, 308 (FC).

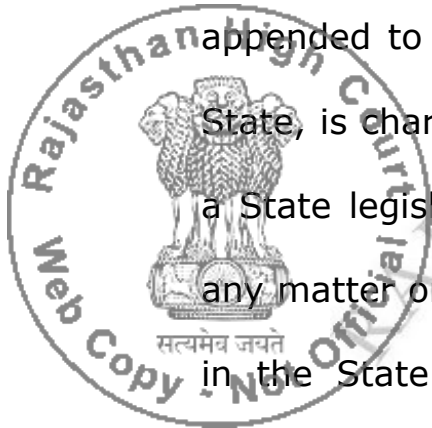
27. Taxable event is that which on its occurrence creates or attracts the liability to tax. Such liability does not exist or accrue at any earlier or later point of time. The identification of the subject-matter of a tax is to be found in the charging section.....

29. It is, therefore, necessary in all cases to find out what is the essence of the duty which is attracted. A taxable event is that which is closely related to imposition.....



65. In the fiscal legislations normally a charge is created. The mischief of taxation occurs on the happening of the taxable event. Different taxes have different taxable events.....”

24. Applying the aforesaid test as laid down by the Hon’ble Supreme Court, a plain reading of Section 3(b) of the Stamp Act of 1998 reveals that every instrument mentioned in the Schedule appended to the Stamp Act of 1998, which is executed out of the State, is chargeable with stamp duty under the Stamp Act of 1998, a State legislation, when it relates to any property situated, or to any matter or thing done or to be done in the State and is received in the State. Therefore, the provision clearly provides for the taxing event, which makes an instrument, though executed out of the State of Rajasthan, chargeable with stamp duty under the State legislation, i.e. the Stamp Act of 1998. The taxing event, in view of expression, “relates to any property situate, or to any matter or thing done or to be done in the State and is received in the State” bears connection in the nature of territorial nexus. In the absence of aforesaid legal requirement under Section 3 of the Stamp Act of 1998, an instrument as defined under the Stamp Act of 1998 even though as a conveyance and mentioned in the Schedule appended to the Stamp Act of 1998, could not be subjected to stamp duty. Further, if the first legal requirement under expression, i.e., “relates to any property situate, or to any matter or thing done or to be done in the State”, is absent, even if it is received in the State, it may not be chargeable with stamp duty under the State legislation, i.e., the Rajasthan Stamp Act, 1998. Therefore, it is not enough that the instrument is a conveyance as covered by entry at Serial





No. 21 in the Schedule appended to the Stamp Act of 1998, but it must bear territorial nexus as required under sub-section (b) of Section 3 of the Stamp Act of 1998, if the instrument happens to be an instrument executed out of the State.

25. The aspect of territorial nexus of State legislation was explained by the Hon'ble Supreme Court in one of its earliest

decision in the case of **State of Bombay V. R.M.D. Chamarbaugwala & Another, AIR 1957 SC 699**, in the matter of challenge to the constitutional validity of Bombay Lotteries and Prize Competitions Control and Tax Act (54 of 1948). The contention raised before the Hon'ble Supreme Court, as noted in

Para 24 therein, was as below:

"(24) The next point urged by the petitioners is that under Arts. 245 and 246 the Legislature of a State can only make a law for the State or any part thereof and consequently the Legislature overstepped the limits of its legislative field when by the impugned Act it purported to affect men residing and carrying on business outside the State. It is submitted that there is no sufficient territorial nexus between the State and the activities of the petitioners who are not in the State."

While considering the arguments and contentions as above, the Hon'ble Supreme Court explained the doctrine of territorial nexus as below:

"The doctrine of territorial nexus is well established and there is no dispute as to the principles. As enunciated by learned counsel for the petitioners, if there is a territorial nexus between the person sought to be charged and the State seeking to tax him the taxing statute may be upheld. Sufficiency of the territorial connection involves a consideration of two elements, namely, (a) the connection must be real and not illusory and (b) the liability sought to be imposed must be pertinent to that connection.

It is conceded that it is of no importance on the question of validity that the liability imposed is or may be altogether disproportionate to the territorial connection.



In other words, if the connection is sufficient in the sense mentioned above, the extent of such connection affects merely the policy and not the validity of the legislation. Keeping these principles in mind we have to ascertain if in the case before us there was sufficient territorial nexus to entitle the Bombay Legislature to make the impugned law."

26. The doctrine of territorial connection or nexus was again applied by the Hon'ble Supreme Court in its subsequent decision in

the case of **Tata Iron & Steel Co. Ltd. V. State of Bihar, AIR 1958 SC 452**, in the matter of challenge to the validity of Bihar Sales Tax Act (19 of 1947) relying upon the earlier decision as referred to hereinabove. After referring to the observations made in earlier decision in the case of **State of Bombay V. R.M.D.**

Chamarbaugwala & Another (supra), Their Lordships held that there is no reason why the theory of territorial nexus should not be made applicable to a State Sales Tax legislation as below:

"(14) It is not necessary for us on this occasion to lay down any broad proposition as to whether the theory of nexus, as a principle of legislation, is applicable to all kinds of legislation. It will be enough, for disposing of the point now under consideration, to say that this Court has found no apparent reason to confine its application to income-tax legislation but has extended it to sales tax and to tax on gambling and that we see no cogent reason why the nexus theory should not be applied to sales tax legislation."

27. The doctrine of territorial nexus was again applied by the Hon'ble Supreme Court in the case of **M/s Hoechst Pharmaceuticals Ltd. & Others Vs. State of Bihar & Others (1983) 4 SCC 45**, examining the constitutional validity of Bihar Finance Act, 1981, on the face of the contention that the State legislation was ultra vires constitutional provisions, imposing surcharge on sales in the course of interstate trade and outside the



State. Deciphering the territorial nexus in the statutory scheme of surcharge, validity of the same was upheld as below:

"90. The liability to pay a surcharge is not on the gross turnover including the transactions covered by Article 286 but is only on inside sales and the surcharge is sought to be levied on dealers who have a position of economic superiority. The definition of gross turnover in Section 2(j) of the Act is adopted not for the purpose of bringing to surcharge inter-State sales or outside sales or sales in the course of import into, or export of goods out of the territory of India, but is only for the purpose of classifying dealers within the State and to identify the class of dealers liable to pay such surcharge. The underlying object is to classify dealers into those who are economically superior and those who are not. That is to say, the imposition of surcharge is on those who have the capacity to bear the burden of additional tax. There is sufficient territorial nexus between the persons sought to be charged and the State seeking to tax them. Sufficiency of territorial nexus involves a consideration of two elements viz.: (a) the connection must be real and not illusory, and (b) the liability sought to be imposed must be pertinent to that territorial connection: State of Bombay v. R.M.D. Chamarbaugwala AIR 1957 SC 699, Tata Iron & Steel Co. Ltd. v. State of Bihar (1958) SCR 1355 and International Tourist Corporation v. State of Haryana (1981) 2 SCC 318....."

28. Applying the principles as discussed in aforesaid decisions, the State legislation, i.e., the Stamp Act of 1998, while providing for chargeability of stamp duty on instruments executed outside the State, when received in the State, provides for territorial nexus in expression, "relates to any property situate, or to any matter or thing done or to be done in the State", incorporated in sub-section (b) of Section 3 of the Stamp Act of 1998.

Section 20 of the Stamp Act of 1998 provides for payment of duty on certain instrument liable to increased duty in the State of Rajasthan. Under this provision, when any instrument has become chargeable in any part of India other than the State of Rajasthan with duty under the Indian Stamp Act, 1899 or under any other law



for the time being in force in such part and thereafter becomes chargeable with a higher rate of duty in the State of Rajasthan under the Stamp Act of 1998, the amount of duty chargeable on such instrument shall be the amount chargeable on it under the Stamp Act of 1998 less the amount of duty, if any, already paid on it in India. It further provides that in addition to the stamps, if any, already affixed thereto, such instrument shall be stamped with the stamp necessary for the payment of the amount of duty chargeable on it under the earlier clause in the same manner and at the same time and by the same person as though such instrument was an instrument received in the State for the first time, when it became chargeable with the higher duty.

In accord with the aforesaid statutory scheme engrafted under Section 3 of the Stamp Act of 1998, i.e. charging section, Section 21 of the Stamp Act of 1998 provides for payment of difference of duty on copies of instruments registered out of the State by providing that where any instrument is registered in any part of India other than the State of Rajasthan and such instrument relates, wholly or partly to any property situated in the State of Rajasthan, the copy of such instrument shall, when received in the State of Rajasthan under the Registration Act, 1908, be liable to be charged with the difference of duty as on the original instrument.

Clearly therefore, it is only the difference of duty in case the instrument is liable to increased duty in the State of Rajasthan, that is payable under the Stamp Act of 1998.

29. Having analysed the statutory scheme of chargeability of stamp duty on an instrument executed out of the State of



Rajasthan applying the principles enunciated by the Hon'ble Supreme Court, i.e., with regard to taxing event and territorial nexus, in the present case, the instrument, i.e. the order of the High Court of Himachal Pradesh sanctioning the scheme of arrangement and amalgamation of Sunvision Engineering Company Private Limited with the appellant-company, i.e. Himachal Futuristic Communications Limited, upon being received in the State of Rajasthan, would be chargeable to stamp duty only in respect of the properties situated in the State of Rajasthan and not in respect of the shares transferred because the taxing event insofar as transfer of shares by virtue of order of amalgamation passed by the High Court of Himachal Pradesh is concerned, it did not happen within the territory of the State of Rajasthan. Both the companies are situated outside the territory of Rajasthan. The entire proceedings of arrangement and amalgamation and its sanction took place outside the State of Rajasthan. Therefore, to that extent, stamp duty under the Stamp Act of 1998 would not be leviable on the order of the High Court of Himachal Pradesh passed under the Companies Act as referred to at Serial No. 21 in the Schedule appended to the Stamp Act of 1998. The transfer of shares, having taken place outside the territorial application of the Stamp Act of 1998, by virtue of order relating to amalgamation, would not be taken into consideration for the purposes of levy of stamp duty under the State Act, i.e., the Stamp Act of 1998.

30. If Section 3 of the Stamp Act of 1998 providing for chargeability to duty is interpreted as held by the learned Single Judge and argued by learned Additional Advocate General



appearing on behalf of the State, then an instrument, which is executed outside the State of Rajasthan, the taxing event having no territorial nexus, would also become chargeable to stamp duty in the State of Rajasthan. Such an interpretation would render otiose the expression, "relates to any property situate, or to any matter or thing done or to be done in the State", which would be against one of the most cardinal principles of interpretation of statutes, for, such an interpretation would be based on rejection of words and expressions consciously used by the legislature. Secondly, such an interpretation would do serious violation to another cardinal principle that the legislative intention is to be primarily gathered from the language of the statute. Thirdly, such an interpretation would render the State legislation itself unconstitutional because it would also be in excess of legislative powers conferred under Article 245 of the Constitution of India, which clearly provides that the Legislature of State may make laws for whole area or any part of the State. We have noticed hereinabove that in the three decisions, i.e., **State of Bombay V. R.M.D. Chamarbaugwala & Another (supra)**, **Tata Iron & Steel Co. Ltd. V. State of Bihar (supra)** and **M/s Hoechst Pharmaceuticals Ltd. & Others Vs. State of Bihar & Others (supra)**, territorial nexus theory was applied in relation to fiscal legislations. Therefore, an interpretation, which saves the constitutionality of the provision, has to be preferred and not the one, which renders the provision unconstitutional.

It is well settled that various entries in three lists of Seventh Schedule of the Constitution of India are not "powers" of legislation, but "fields" of legislation. Article 245 of the Constitution of India



provides for extent of laws made by the Parliament and by the Legislatures of States. It is well settled that taxation is considered to be a distinct matter for the purposes of legislative competence. There is distinction made between general subjects of legislation and taxation. The general subjects of legislation are dealt with in one group of entries and power as also taxation in a separate group. Hence, the power to tax cannot be deduced from a general legislative entry as an ancillary power. It is, thus, clear that an interpretation giving wide sweep of legislative power to the State legislature, so as to levy stamp duty on instruments executed outside the State even when it does not relate to any taxing event having any territorial nexus within the State, would be violative of Article 245 of the Constitution of India.

31. Referring to more than one decisions of the Hon'ble Supreme Court hereinabove, we have held that taxing statute cannot be interpreted on any presumption or assumption and it has to be interpreted in the light of what is clearly expressed and not by way of implication which has not been expressed. Having dealt with this legal position in three decisions of the Hon'ble Supreme Court, as stated hereinabove, we need not burden our decision with plethora of decisions on this point.

The Constitution Bench of the Hon'ble Supreme Court in the case of **Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar and Company & Others (supra)**, after discussing the divergent views with regard to principles applicable in the case of ambiguity in a charging provision, authoritatively pronounced as below:



“53. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State.

54. In Govind Saran Ganga Saran v. CST 1985 Supp SCC 205, this Court pointed out three components of a taxing statute, namely, subject of the tax; person liable to pay tax; and the rate at which the tax is to be levied. If there is any ambiguity in understanding any of the components, no tax can be levied till the ambiguity or defect is removed by the legislature. [See Mathuram Agrawal v. State of M.P. (1999) 8 SCC 667; Indian Banks' Assn. v. Devkala Consultancy Service (2004) 11 SCC 1 and Consumer Online Foundation v. Union of India (2011) 5 SCC 360.]”

32. The finding of the learned Single Judge that the stamp duty, if not paid in the State of Himachal Pradesh, could well be levied under the Stamp Act of 1998, does not have any legal basis in view of the discussion as above. Firstly, there is no material on record placed by any of the parties to establish that the instrument-in-question was leviable to stamp duty under the State law in Himachal Pradesh. Secondly, irrespective of whether or not the appellant was liable to pay stamp duty in the State of Himachal Pradesh and whether or not it has been paid in that State, the stamp duty would be leviable only in respect of the properties situated in the State of Rajasthan and not in respect of transfer of shares under the instrument as that transfer by execution of instrument and passing of order by the High Court of Himachal Pradesh does not bear any territorial nexus.



Reliance placed by learned Additional Advocate General on the judgment of the Hon'ble Supreme Court in **Hindustan Lever & Another Vs. State of Maharashtra & Another (supra)** is misplaced as in that case the issue arising for consideration was as below:

"8. The issues which are debated before us are: (1) whether the State Legislature had the legislative competence to impose stamp duty on the order of amalgamation passed by a court? and (2) whether an order sanctioning a scheme of amalgamation under Section 394 read with Section 391 of the Companies Act, 1956, is liable to be stamped in accordance with the provisions of the Bombay Stamp Act in its application in the State of Maharashtra?"

In the present case, it is not the case of the petitioner that the legislature does not have the competence to impose stamp duty on order of amalgamation passed by a Court but chargeability to stamp duty in terms of the provisions contained under the statutory scheme of Section 3 of Stamp Act of 1998 and issue regarding territorial nexus.

The decision of the Hon'ble Supreme Court in **New Central Jute Mills Co. Ltd. & Others Vs. State of West Bengal & Others(supra)** does not support the argument of the respondents-State and it only supports the case of the petitioner that only the difference of the duty in case rate of duty is higher in the State of Rajasthan would be payable in view of the provisions contained in Section 21 of the Stamp Act of 1998. This is clear from what has been held by the Hon'ble Supreme Court in Para 20 of the aforesaid judgment which is reproduced as below:

"(20) The result of this will be that if an instrument after becoming liable to duty in one State on execution there becomes liable to duty also in another State on receipt there, it must first be stamped in accordance with the law



of the first State and it will not require to be further stamped in accordance with the law of the second State when the rate of that second State is the same or lower; and where the rate of the second State is higher, it will require to be stamped only with the excess amount and that in accordance with the law and the rules in force in the second State.”

33. As sequitur to aforesaid consideration and discussion, we hold that the appellant would be liable for payment of stamp duty only on the market value of the properties situated in the State of Rajasthan required to be assessed in accordance with the statutory scheme of the Stamp Act of 1998. The demand for payment of stamp duty in excess of such liability is in excess of authority under the Stamp Act of 1998.

34. In the result, order dated 07.06.2019 passed by the learned Single Judge is held unsustainable in law and the same is set aside. Writ petition is also allowed. Order and notice dated 07.03.2018 issued by Respondent No. 2, The Collector (Stamps), Jaipur Circle-III (Annexure P-1 and Annexure P-2 attached with the writ petition) to the extent of including value of shares issued pursuant to the scheme of arrangement and amalgamation are also quashed. Respondent No. 2 is directed to carry out fresh assessment of duty payable by the appellant-company in accordance with the directions issued by this Court.

Appeal is, accordingly, allowed. No order as to costs.

(BIRENDRA KUMAR),J

(MANINDRA MOHAN SHRIVASTAVA),J

MANOJ NARWANI