

BOARD OF REVENUE, U.P. STATE OF U.P. AND ORS.

v.

M/S. ELECTRONIC INDUSTRIES OF INDIA,
ISHWARI SINGH AND ANR.

SEPTEMBER 4, 1995

[KULDIP SINGH AND S. SAGHIR AHMED, JJ.]

U.P. Town Improvement Act, 1919(as amended by Local Self Government Laws (Amendment) Act, 1966.

S.67-H(1)—Additional duty chargeable on deed of transfer of immovable property—Nature of—Held: it is stamp duty under Stamp Act—Provisions of ss.33, 40 and 48 Stamp Act can be invoked if increased duty leviable under s.67-H(1) has not been paid.

Indian Stamp Act, 1899 :

Ss.3, 33, 40 48, 57—Stamp duty—Additional duty chargeable under s.67-H(1) of U.P. Town Improvement Act—Held is stamp duty—Whole of Stamp Act has been made applicable to documents covered by s.67-H of U.P. Act.

The respondents mortgaged certain immovable properties executing a mortgage deed in favour of the U.P. Financial Corporation. The authorities under the Stamp Act found that in view of section 67-H(1) of the U.P. Act, the stamp duty was deficient. The document was impounded under the provisions of the Stamp Act. The respondents after paying the deficient duty under protest made an application under Section 45 of the Stamp Act for refund. The Revenue referred the following questions for opinion of the High Court under section 57 of the Stamp Act:

- (1) Whether an instrument of simple mortgage of immovable property situated in an area to which the U.P. Town Improvement act was made applicable was a deed of transfer of immovable property within the meaning of section 67-H of the said Act? and
- (2) Whether a public officer was barred from impounding a document under section 33 and the Collector was barred from

- A imposing any deficit duty and penalty under section 40 and realising the same under section 48 of the Stamp Act on a deed of transfer of immovable property on which Stamp duty as payable under the Stamp Act only was paid and the increased duty under Section 67-H of the Town Improvement Act was not paid?
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The High Court answered question No. 1 in the affirmative and in favour of the Revenue. It, however, answered question No. 2 against the Revenue holding that the duty leviable under section 67-H of the U.P. Act was in the form of surcharge payable under the said Act over and above the stamp duty; that the said duty was assessed independently of the stamp duty and was not to be calculated in accordance with the manner provided in the Stamp Act. Aggrieved, the Revenue filed the appeal.

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Allowing the appeal and answering question No. 2 in the negative and in favour of the Revenue, this Court

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HELD : 1.1. The High Court was not justified in holding that the additional duty payable under Section 67-H of the U.P. Town Improvement Act, 1919 was not the duty under the Stamp Act. Provisions of Section 67-H(1) indicate that it is the duty's Imposed by the Indian Stamp Act, 1899" which is increased by 2 per cent in respect of any deed of transfer of immovable property within the area to which the Act applies. The document which comes within the mischief of Section 67-H(1) is first assessed to normal stamp duty under the Stamp Act and thereafter the stamp duty so assessed is increased by 2 per cent on the amount or value of the consideration with reference to which the Stamp duty is calculated under the Stamp Act. The legislative-intent is clear inasmuch as that even after adding 2 per cent increase, the total stamp duty remains a levy under the Stamp Act. It would be doing violence to the simple language of the statute to state that 2 per cent increase is only a surcharge and is not a duty under the Stamp Act. The tenor of the section makes it clear that what comes out after adding 2 per cent increase is the stamp duty under the Stamp Act and not any other levy. It cannot be treated differently despite the departure in the method of calculating the same. [299-B-E; 300-B]

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1.2. It cannot be said that the Legislature applied only Sections 27 and 64 of the Stamp Act to a deed of transfer covered by Section 67-H(1) of the U.P. Act and the other provisions of the Stamp Act are not attracted.

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Reading sub-sections (3) and (4) of Section 67-H with sub-section (1) of the said section, clearly shows that whole of the Stamp Act has been made applicable to the documents covered by Section 67-H. Sections 27 and 64 of the Act have been modified in their applicability to the documents under Section 67-H of the Act for the purpose of adaptability. The other provisions of the Stamp Act did not require any modifications and as such are applicable mutatis mutandis. [299-F-G]

1.3. The High Court was not justified in holding that the object and purpose of the levy under the Stamp Act is different than the one under Section 67-H of the U.P. Act. The object and purpose of levy of duty under the stamp Act and the additional duty under Section 67-H are the same inasmuch as both are fiscal enactments with the primary object of raising revenue for the State. The only difference is that the revenue realised under the stamp Act goes to the consolidated fund whereas the additional collection made under Section 67-H is paid to the Improvement Trust concerned by the State Government. [300-D; B-C]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1474/80 with 5964 of 1983.

From the Judgment and Order dated 10.7.79 & 10.9.80 of the Allahabad High Court in stamp Act Reference No. 531/76 & C.M.W.P. No. 8375 of 1973.

T.N. Singh for R.B. Misra, for the Appellants.

S. Markandeya for the Respondent in C.A. No. 5964/83.

P.K. Jain for the Intervenor in C.A. No. 1474/80

The Judgment/Order of the Court were delivered by

KULDIP SINGH, J. Section 67-H(1) of the U.P. Town Improvement Act 1919 (the Act) provides that the duty imposed by the Indian Stamp Act, 1899 (the Stamp Act) on any deed of transfer of immovable property shall, in the case of immovable property situated within an area to which the Act applies, be increased by 2 per cent on the amount or value of the consideration with reference to which the duty is calculated under the Stamp Act. The question for our consideration is whether a document, on which the stamp duty as payable under the Stamp Act has been paid but

- A the increase duty under Section 67-H(1) of the Act has not been paid, is not subjected to the penal provisions of the stamp Act and as such cannot be impounded under Section 33 of the stamp Act and is further not liable to penalty under Section 40 of the said Act? The High Court has answered the question in the affirmative and in favour of the respondent. This appeal by way of special leave is by the Board of Revenue, Uttar Pradesh against the judgment dated July 10, 1979 of the Allahabad High Court.

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D M/s. Electronic Industries of India, the respondent herein, executed a mortgage deed dated April 7, 1973 in favour of the U.P. Financial Corporation whereby the property of the borrower situated at Ghaziabad within the area to which the Act applied, was mortgaged to secure a loan of Rs. 6 lakh 36 thousand. On September 1, 1973, the authorities under the Stamp Act examined the document and found that the stamp duty was deficient. As a consequence, the document was impounded under the provisions of the Stamp Act. The respondent paid the deficient duty under protest and thereafter submitted an application under Section 45 of the stamp Act for its refund. That gave rise to two questions which were referred for the opinion of the High Court under Section 57 of the Stamp Act. The questions are as under :

E "1. Whether an instrument of simple mortgage (mortgage without possession) of immovable property situated in an area to which the U.P. Town Improvement Act 1919 (VIII of 1919) as amended by the Local Self Government Laws (Amendment) Act, 1966 (XXIX) of 1966 has been made applicable is a deed of transfer of immovable property within the meaning of Section 67-H of the said Act?

F 2. Whether a public Officer is barred from impounding (a document) under Section 33 and the Collector is barred from imposing any deficit duty and penalty under Section 40 and realising the same under Section 48 of the Stamp Act on a deed of transfer of immovable property situated in an area to which the U.P. Town Improvement Act, 1919 applied, on which stamp duty as payable under the Stamp Act only has been paid and the increased duty under Section 67-H of the Town Improvement Act has not been paid.?"

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H The first question was answered by the High Court in the affirmative and in favour of the Revenue. The correctness of the High Court's answer

to the first question has not been challenged before us.

It would be useful to have a look at the scheme of the Stamp Act. Section 3 deals with the instruments which are chargeable with duty. Sections 10 to 15 deal with the stamps and the mode of using them. Section 27 provides that the consideration, if any, and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein. Section 33 deals with the examination and impounding of instruments which are not duly stamped. Section 40 empowers the collector to assess and impose the penalty in respect of the impounded instruments or the instrument found by him not duly stamped. Section 48 provides the mode of recovery of duties and penalties. Section 64 further provides penalty for omission to comply with the provisions of Section 27 of the stamp Act. The Stamp Act contains a comprehensive scheme about the levy, collection and realization of stamp duty chargeable under it. It is a self-contained code.

Section 67-H of the Act reads as under :

"67-H (1) : The duty imposed by the Indian Stamp Act, 1899 on any deed of transfer of immovable property shall, in the case of immovable property situated within an area to which this Act applies be increased by two per cent on the amount or value of the consideration with reference to which the duty is calculated under the said Act.

(2) All collections resulting from the said increase shall, after the deduction of incidental expenses, if any, be paid to the trust by the State Government in such manner as may be prescribed by rules.

(3) For the purposes of this Section, Section 27 of the Indian Stamp Act, 1899 shall be so read and construed as if it specifically required the particulars referred to therein to be separately set forth in respect of :

(a) property situated within the area notified, and

(b) Property situated outside such area :

(4) For the purposes of this section, Section 64 of the Indian Stamp

A Act, 1899 shall be so read and construed as if it referred to the Trust as well as to the Government."

The short question for our consideration is whether the provisions of Sections 33 and 40 of the Stamp Act are attracted to the instruments on which increased duty under Section 67-H(1) of the Act has not been paid.

B The High Court answered the question against the Revenue on the following reasoning :

C "The duty payable under Section 67-H of the U.P. Town Improvement Act is different than the stamp duty which is to be paid under the Stamp Act. Section 67-H imposes duty on transfer of property. The Stamp Act does not make any provision for the payment of Stamp duty on a deed of transfer. The duty leviable under Section 67-H is in the form of surcharge payable under the said Act over and above the stamp duty. The duty payable under Section 67-H is assessed independently of the stamp duty. The transfer duty is calculated on the amount of the consideration set out in the conveyance. It is not to be calculated in accordance with the manner provided in the Stamp Act."

D "The Legislature applied only Sections 27 and 64 of the Stamp Act to a deed of transfer covered by Section 67-H. There is nothing in the Town Improvement Act which could show that the rest of the provisions of the Stamp Act would also apply. It does not appear logical to hold that where only two provisions from an existing Act have been incorporated into a subsequent Act, the remaining provisions of the previous Act can be deemed to be incorporated in the later Act."

E "The departure in the method of calculating the duty covered by Section 67-H is a strong circumstance leading to the irresistible conclusion that the duty payable under Section 67-H cannot be treated as the same which is required to be given under the Stamp Act."

F "The departure in the method of calculating the duty covered by Section 67-H is a strong circumstance leading to the irresistible conclusion that the duty payable under Section 67-H cannot be treated as the same which is required to be given under the Stamp Act."

G The second difference is that the object and purpose of the levy of the stamp duty under the Stamp Act is different than that of Section 67-H. As the Legislature advisedly intended to differen-

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tiating between the two types of charges, no provisions for its levy was made in the Stamp Act. That being so a deed of transfer cannot be impounded under Section 33 of the Stamp Act nor can it be subjected to penalty because the increased duty under S.67-H of the Town improvement Act has not been paid." A

We are not inclined to agree with the reasoning and the conclusions reached by the High Court. A bare reading of the provisions of Section 67-H(1) of the Act shows that it is the duty "imposed by the Indian Stamp Act 1899" which is increased by 2 per cent in respect of any deed of transfer of immovable property within the area to which the Act applies. The document which comes, within the mischief of Section 67-H(1) of the Act, is first assessed to normal stamp duty under the Stamp Act and thereafter the stamp duty so assessed is increased by 2 per cent on the amount or value of the consideration with reference to which the stamp duty is calculated under the Stamp Act. The legislative-intent is clear inasmuch as that even after adding 2 per cent increase, the total stamp duty remains a levy under the stamp Act. It would be doing violence to the simple language of the statute to hold that 2 per cent increase is only a surcharge and is not a duty under the stamp Act. We are of the view that the High Court was not justified in holding that the additional duty payable under Section 67-H of the Act was not the duty under the Stamp Act. The tenor of the section makes it clear that what comes out after adding 2 per cent increase is the stamp duty under the stamp Act and not any other levy. B C D E

The contention that the Legislature applied only sections 27 and 64 of the Stamp Act to a deed of transfer covered by Section 67-H(1) of the Act and the other provisions of the Stamp Act are not attracted, is on the face of it fallacious. Reading, Sub-Sections (3) and (4) of Section 67-H of the Act with sub-section (1) of the said section, clearly shows that whole of the stamp Act has been made applicable to the documents covered by Section 67-H of the Act. Sections 27 and 64 of the Act have been modified in their applicability to the documents under section 67-H of the Act for the purpose of adaptability. The other provisions of the Stamp Act did not require any modifications and as such are applicable mutatis mutandis. F G

The High court was not justified in holding that the method of calculating the additional duty being different, it could not be a duty under the stamp Act. As mentioned above the document under Section 67-H(1) H

A of the Act has in the first instance to be assessed under the provisions of the Stamp Act and thereafter the amount of stamp duty is to be increased by 2 per cent as provided under the said section. In any case the plain reading of the provisions of Section 67-H of the Act makes it clear that the 2 per cent increase is an addition to the stamp duty and, as such, cannot be treated differently despite the departure in the method of calculating the same.

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C The object and purpose of levy of duty under the stamp Act and the additional duty under Section 67-H of the Act are the same inasmuch as both are fiscal enactments with the primary object of raising revenue for the State. The only difference is that the revenue realized under the Stamp Act goes to the consolidated fund whereas the additional collection made under Section 67-H of the Act is paid to the Improvement Trust concerned by the State Government. The High Court was, therefore, not justified in holding that the object and purpose of the levy under the Stamp Act is different than the one under Section 67-H of the Act.

D We allow the appeal, set aside the impugned judgment of the High Court and answer the question No.2 in the reference under Section 57 of the Stamp Act in the negative and in favour of the appellant-Board of Revenue, Uttar Pradesh. No costs.

E We have today delivered judgment in Civil Appeal No. 1474/1980 titled *Board of Revenue, U.P. v. M/s. Electronic Industries of India*. For the reasons recorded by us in the said judgment, we allow this appeal, set aside the impugned judgment of the High Court dated 10.9.1980 and dismiss the Civil Miscellaneous Writ Petition No. 8375 of 1973 filed by the respondent before the High Court. No costs.

F R.P.

Appeal allowed.