

**THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Special Appeal No. 574 of 2015**

State of Uttarakhand & others .....Appellants

Vs.

M/S Nutech Vaninish Udyog & others ...Respondents

Present:

Mr. Pradeep Joshi, Standing Counsel for the State of Uttarakhand/appellants.

Mr. B.P. Nautiyal, Senior Advocate assisted by Mr. Mohd. Matloob, Advocate for the respondent-writ petitioners.

Dated: 01<sup>st</sup> April, 2019

**Coram: Hon'ble Ramesh Ranganathan, C.J.**

**Hon'ble N.S. Dhanik, J.**

**Ramesh Ranganathan, C.J. (Oral)**

The entire claim of the respondents-writ petitioners, for refund of the excess stamp duty said to have been paid by them during the years 2001 to 2010, is based on a letter addressed by the Principal Conservator of Forests dated 28.01.2014, wherein he stated that the excess amount of stamp duty, collected from the respondents-writ petitioners of 6% (difference between the duty collected of 8% and the duty leviable at 2%) should be refunded to them in accordance with the order of the Supreme Court in Civil Appeal No. 5876 of 2009 dated 27.10.2010.

2. The earlier writ petition filed by the respondents-writ petitioners, claiming that no stamp duty was leviable on moveable goods, was rejected by a Division Bench of this Court by its order dated 13.04.2004. Subsequently, on an application being filed by the respondents-writ petitioners, seeking review of the said order, the Division Bench, by its order dated 27.12.2007, allowed the review applications holding that no stamp duty could be levied on the subject transactions. Aggrieved thereby, the State of Uttarakhand carried the matter in appeal and the Supreme Court by its order, in Civil Appeal No. 5876 of 2009 and batch dated 27.10.2010, held that the subject transaction, even it is treated as an agreement of sale of

moveable property, would nonetheless amount to conveyance within the meaning of Section 2 (10), and would be chargeable to stamp duty under Article 23 Schedule 1-B of the Stamp Act. The order in review dated 27.12.2007, passed by the Division Bench of this Court, was set-aside.

3. Though the Supreme Court had, in its order dated 27.10.2010, referred to Article 23 whereunder the stamp duty leviable is 2% neither the Division Bench in its order in the review applications (i.e. order dated 27.12.2007) nor the Supreme Court in its order dated 27.10.2010, have issued any directions to the appellants herein to refund the excess stamp duty. In fact the claim for refund of stamp duty, allegedly collected from the appellants herein, was not even the subject matter of Writ Petition (M/B) No. 902 of 2001 and batch which were all transferred to the Uttarakhand High Court from the Allahabad High Court after the State of Uttarakhand was created on 09.11.2000. While the writ petitions, transferred from the Allahabad High Court to this Court, were originally instituted during the years 1988 to 1992, the stamp duty, refund of which is claimed in the present writ petition, relates to the subsequent period from 2001 to 2012.

4. While collection of stamp duty at 8%, after the judgment of the Supreme Court in Civil Appeal No. 5876 of 2009 dated 27.10.2010, is impermissible, and the said amounts, if any, collected by the appellants would be required to be refunded, the question which would necessitate examination, in this writ petition when it is finally heard, is whether the respondents-writ petitioners claim, for refund of excess stamp duty paid by them during the period 2001 to 2010 (till the date of the judgment of the Supreme Court), can be examined in writ proceedings under Article 226 of the Constitution of India, when neither the Division Bench in its order in Review Application Nos. 2345 of 2004 and batch dated 27.12.2007, nor

the Supreme Court in its order dated 27.10.2010, have directed refund.

5. As noted hereinabove, the petitioners claim of illegal collection of stamp duty, for the period 2001 to 2012, was not even under consideration before the Division Bench of this Court or before the Supreme Court, and the respondents-writ petitioners have sought refund of the amount, allegedly collected by the State Government in excess of the actual stamp duty payable, for the first time in the present writ petition.

6. Questions as to whether the respondents-writ petitioners are entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for refund of amounts relating to the period from 2001 to 2012, or whether they should be relegated to the remedy of filing a Civil Suit, would necessitate examination in the special appeal when it is finally heard. The question whether a writ petition filed in the year 2015, seeking refund of the amounts allegedly paid by them in excess during the year 2001 to 2012, is hit by inordinate delay and laches, requiring this Court to refrain from interference in proceedings under Article 226 of the Constitution of India, would also necessitates examination when the appeal is finally heard.

7. Even otherwise no particulars have been furnished by the respondents-writ petitioners of the agreements with respect to which they had paid excess stamp duty, and the years to which these agreements relate. All that has now been filed, by way of a supplementary affidavit, is the year wise break up of the respondents-writ petitioners' claim of excess stamp duty paid by them. That would, undoubtedly, not suffice since stamp duty is agreement specific. It is the respondents-writ petitioners who have invoked the jurisdiction of this Court, and the burden is on them to prove that they had paid excess stamp duty during the said period, and furnish proof of

such payment by furnishing details of the agreements towards which they had paid excess stamp duty.

8. Sri B.P. Nautiyal, learned Senior Counsel for the respondents-writ petitioners, would submit that a supplementary affidavit, in this regard, would be filed within six weeks from today.

9. Since all the questions, referred to hereinabove, can only be examined when the Special Appeal is finally heard, let the Special Appeal be listed for final hearing at an early date.

**(N.S. Dhanik, J.)**

**(Ramesh Ranganathan, C.J.)**

01.04.2019

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