



No rebate on stamp duty paid in the State of Maharashtra on the order of the High Court sanctioning the scheme of compromise or arrangement for stamp duty paid in another state

Background

Recently, the Bombay High Court (High Court/Court) in the matter relating to amalgamation of Reliance Industries Limited (RIL) and Reliance Petroleum Limited (RPL)¹ held that a company in the State of Maharashtra would not be entitled to rebate under Section 19 of the Bombay Stamp Act, 1958 (the Act) in respect of stamp duty paid on an order sanctioning the scheme for compromise or arrangement passed by another High Court.

Facts of the case

- Reliance Industries Limited, Maharashtra and Reliance Petroleum Limited, Gujarat entered into a scheme of amalgamation under Sections 391 and 394 of the Companies Act, 1956. The order sanctioning the scheme of amalgamation for RIL was obtained from the High Court of Bombay, and that of RPL was obtained from the High Court of Gujarat.
- RIL had paid a stamp duty of INR10 crore on the order sanctioning the scheme in the State of Gujarat. During the hearing of adjudication proceedings, RIL urged that the maximum stamp duty payable under Article 25 (da) of Schedule-1

of the Act for an order sanctioning the Scheme of Amalgamation in the State of Maharashtra was INR25 crore and since it had already paid stamp duty of INR10 crore in the State of Gujarat on the order sanctioning the scheme passed by the Gujarat High Court, RIL was entitled to remission/deduction/set-off in the payment of stamp duty thereon to the extent of INR10 crore. Therefore, RIL was liable to pay only INR15 crore as stamp duty. This submission of RIL was, however, rejected by the Superintendent of Stamp, Mumbai and RIL were directed to pay the entire amount of INR25 crore as stamp duty.

- The order of adjudication was appealed by RIL before the Chief Controlling Revenue Authority, Maharashtra State. The appeal filed by RIL was dismissed and the order of the Superintendent of Stamp, Mumbai was upheld. The matter was subsequently placed before the High Court by way of a writ petition.

Bombay High Court's ruling

- The High Court held that the order sanctioning the scheme was an instrument upon reading of Section 2(l) of the Act and as per the scheme of

¹ Source - <http://bombayhighcourt.nic.in/>

the Act, the instrument is chargeable to duty and not the transaction and therefore even if the scheme may be the same i.e. the transaction being the same, if the scheme is given effect by a document signed in the State of Maharashtra, it is chargeable to duty as per the rates provided in Schedule I.

- As per the scheme of the Act, the taxable event is the execution of the instrument and not the transactions. If a transaction is not supported by execution of an instrument, there cannot be a liability to pay duty. Therefore, essentially the duty is leviable on the instrument and not the transactions.
- Although the two orders of two different high courts were pertaining to the same scheme, they were independently different instruments and could not be construed to be the same document, especially when the two orders of two different high courts were upon two different petitions by two different companies.
- The court further held that in a scheme, compromise or arrangement sanctioned under Sections 391 and 394 of the Companies Act, 1956, where the registered offices of the two companies are situated in two different States, the company in the State of Maharashtra is not entitled for rebate under Section 19 as it would be applicable in respect of:
 - I. An instrument executed outside the state;
 - II. Property in the state or thing done or to be done in the state; and
 - III. Subsequently received in the State of Maharashtra
- Since the instrument in question was the order executed by the court, the order was already in Mumbai and executed in Mumbai. It was not executed outside Maharashtra. It was not received in Maharashtra since it originated in Maharashtra. Therefore, the ingredients of Section 19 were not complied with and hence, RIL, while paying duty on the order of the court, could not claim a rebate for duty paid on the order in the State of Gujarat by invoking Section 19 of the Act.

Our comments

The instant decision provides clarity on the issue related to claiming rebate for stamp duty paid in the State of Maharashtra, where stamp duty has already been paid in another state on orders sanctioned by respective court for the same scheme.

Companies may need to evaluate the possibility of shifting registered offices to a particular state to reduce stamp duty costs in light of the said decision. However, companies having immovable properties in different states could evaluate the implications of stamp duty on the transfer of properties by way of an order sanctioning the scheme.

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