2025 INSC 262

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2643 OF 2025
(arising out of S.L.P. (Civil) No. 594 OF 2020)

DR. POORNIMA ADVANI & ANR. **APPELLANT(s)**

VERSUS

GOVERNMENT OF NCT & ANR. **RESPONDENT(s)**

O R D E R

1. IA No. 4291/2024 for substitution is allowed. Cause title be amended accordingly.

2. Leave granted.

3. This appeal arises from the judgment and order passed by the High Court of Delhi dated 27th September, 2019 in Letters Patent Appeal No. 288 of 2019 by which the appeal filed by the appellants herein against the judgment and order passed by the learned Single Judge of the High Court partly allowing the Writ Petition No. 9014 of 2017 filed by the appellants herein came to be dismissed.

4. The facts giving rise to this appeal may be summarized as under:-

The appellants herein were desirous of purchasing an immovable property in New Delhi. For that purpose, they purchased the e-stamp paper dated 06.07.2016 valued at Rs.28,10,000/- (Rupees Twenty Eight Lakh Ten Thousand Only).

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The money for that purpose was paid from the joint bank account of the appellants being husband and wife respectively. The e-stamp paper which came to be purchased was dated 06.07.2016.

5. We borrow the other relevant facts from the judgment and order passed by the learned Single Judge dated 20th August, 2018 more particularly, from paragraph 4.3 therein:-

> ***"4.3 Pertinently, the e-stamp paper dated 06.07.2016 purchased by the petitioners, sets down the following details:***
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> > ***(i)Particulars of the property, which was proposed to be purchased;(ii) the names of the parties, who intended to execute the sale deed;(iii) the consideration to be paid for consummating the sale transaction; and (iv) the value of e-stamp paper.***
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> ***4.4 According to the petitioners, though initially, the intention was to execute the sale deed concerning subject property in July,2016, since, there was some delay in closing the loan transaction via which the transaction was to be funded, the execution of the sale deed was delayed.***
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> ***4.5 This delay proved to be fatal, inasmuch as, on 4.8.2016, the petitioners were told by the broker, who had the custody of the e-stamp paper, that the e-stamp paper dated 6.7.2016 had been misplaced.***
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> ***4.6 The petitioners realizing the enormity of the loss, filed a complaint with the Crime Branch, Delhi Police, on that very day i.e. 4.8.2016. As a follow up action, on 06.08.2016, the petitioners got public notices issued in two newspapers, namely, Asian Age (English edition) and Rashtriya Sahara (Hindi edition).***
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> ***4.7 Since, the petitioners were desirous of taking the sale transaction in respect of subject property forward, they were left with no choice but to purchase a fresh e-stamp paper, which they did, on 6.8.2016.***
>
> ***4.8 This stamp paper bore the No.IN-DL80452882772240. The money for this was also paid***

out from the joint account of the petitioners, maintained with the State Bank of India.

4.9 Consequent thereto, on 8.8.2016, the petitioners and the vendor i.e., M/s. Scud Finlease Limited executed a sale deed.

5. On 11.8.2016, the petitioners filed an application with the Sub-Divisional Magistrate, Collector of Stamps, for refund of stamp duty amounting to Rs.28,10,000/- on account of loss of the e-stamp paper dated 6.7.2016.

5.1 The prayer made in the application was that the amount be refunded to the petitioners after deducting the usual cancellation charges, if any. The application was accompanied by an affidavit of petitioner No.2 that the e-stamp paper dated 6.7.2016 has been lost and was not traceable despite best efforts.

5.2 Furthermore, an indemnity bond was also executed by petitioner No.2, whereby he undertook to indemnify the respondents, if the stand taken by him that the e-stamp paper dated 6.7.2016 had been lost, proved to be incorrect and, as a result thereof, any loss/damage, etc. was suffered by them.

5.3 Since no action was taken on the petitioners' application dated 11.8.2016, the petitioners addressed a letter dated 8.9.2016 to respondent No.2. In this letter, apart from anything else what was sought to be highlighted by the petitioners were two aspects: first, given the fact that every transaction is made in electronic form, it could be verified almost instantaneously; and second, the misplaced or lost e-stamp paper dated 6.7.2016 could not be used for any other purpose except that, which stood specified in the e-stamp paper. It was emphasized that given that fact that via a fresh e-stamp paper dated 6.8.2016, transaction qua the stamp paper dated 6.7.2016 had been consummated, the lost e-stamp paper had lost its legal efficacy and thus, could not be misused by anyone else.

5.4 As is evidence that both these assertions were made by the petitioners to allay the apprehensions of respondent No.2.

5.5 However, the petitioners' plea for refund of stamp duty did not cut much ice with the respondents

and, consequently, vide order dated 21.10.2018, the Collector of Stamps (HQ) rejected the petitioners' application dated 11.8.2016 maintained for refund of stamp duty.

6. Aggrieved by the impugned order dated 21.10.2016, the petitioners have preferred by the instant writ petition."

6. The learned Single Judge adjudicated the writ petition and ultimately thought fit to partly allow the same. The learned Single Judge issued a writ of mandamus to the respondents herein to refund a sum of Rs. 28,10,000/- within a period of two weeks from the date of pronouncement of the judgment.

7. It appears that the petition was partly allowed as only the principal amount was ordered to be refunded whereas the interest on the same was declined. We take notice of few relevant observations made by the learned Single Judge while ordering refund of the principal amount referred to above:-

"19. Therefore, the question before me is: should the Court, in such circumstances, fold its hands and deny a person, who has lost the stamp paper, relief only because the draftsman has omitted the use of such expression explicitly in the Statute. As noticed above, it is not unknown to law that when Courts have encountered such creases in the Statute they have proceeded to iron them out without destroying the fabric which forms the core of the Statute. The expression obliterate appearing in Section 49(a) of the Act should, in my opinion, include cases where the Stamp paper is lost by an applicant seeking refund of stamp duty. This would be a reasonable 'and practical' interpretation of Section 49(a) of the Act, as any other interpretation could lead to a situation where it may fall foul of Article 14 of the Constitution.

20. There is another way of looking at the matter, which is, the scheme of Chapter V of the Act. If the scheme, as discussed above, is kept in mind, respondents ought to refund stamp duty even in cases

where an applicant claims refund of stamp duty on account of loss of e-stamp paper; subject to an enquiry establishing factum of loss and adequate safeguards being put in. To my mind, if the contrary view was sustained, it would result in the State retaining money without the authority of law, as admittedly, the taxing event had not occurred in the facts and circumstances of this case.

21. In the instant case, the petitioners have provided a photocopy of e-stamp paper dated 6.7.2016, which at the moment, is the best secondary evidence available with it, which, shows that the e-stamp paper was not engrossed.

21.1 Given the foregoing discussion, clearly, the amount retained by the respondents cannot be in the nature of tax as the taxing event has not occurred in the instant case. It cannot be also in the nature of fee as there was no quid pro quo.

21.2 In any event, the stand of the respondents is that the stamp duty is in the nature of tax. If that be the position, could the respondents retain money in anticipation of the taxing event occurring? Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. Therefore, emphasis is not only on no tax being levied without the authority of law, but is also on collection of tax without authority of law.

22. Therefore, in my view, the continued retention of amount paid towards anticipated stamp duty in the hands of the respondents is illegal. The apprehension expressed by the respondents that there was a possibility of the lost e-stamp paper being mis-utilized seems to be tenuous for the following reasons:

(i) First, the particulars of the transaction, parties and the consideration have already been incorporated in the lost e-stamp paper.

(ii) Second, with the technological innovation in place, the said information would be available and anyone trying to use the lost e-stamp paper can easily be found out. In any event, the fact the lost e-stamp paper dated 06.07.2016 adverts to the same property qua which sale transaction stands effected via the new stamp paper dated 06.08.2016, the

possibility of misuse of the old e-stamp paper dated 06.07.2016, to my mind, does not arise.

(iii) The lost e-stamp paper dated 06.07.2016 having been locked and cancelled, there is, to my mind, given the technology in place, no possibility of the lost e-stamp paper being mis-utilized. The Collector of Stamps invariably checks the website of Stock Holding Corporation Ltd. to ascertain whether or not the stamp paper is genuine. The order dated 11.03.2015, passed by the Divisional Commissioner, clearly casts such an obligation on the Collector of Stamps.

(iv) Lastly, in any case, the petitioners have furnished an indemnity bond, and therefore, loss or damages, if any, suffered by the respondents can always be recovered.

23. Before I proceed further, I need to touch upon the argument raised by Mr. Ramesh Singh that the view held by a Single Judge of this Court in Piyush Aggarwal's case requires reconsideration. This was a case where the petitioners had sought refund of stamp duty on account of the fact that before the instrument on which the stamp duty was leviable, was executed, by virtue of a notification issued by the State, the stamp duty and transfer duty on conveyance had been substantially reduced. Since, the petitioners had paid excess stamp duty and transfer duty, they sought refund of the same.

23.1 The facts, as gleaned from the judgment, would show that the conveyance i.e. the instrument, in that case, was executed on 30.06.2003, whereas the notification, reducing the stamp duty and transfer duty, was issued on 19.05.2003.

23.2 The Court was, thus, called upon to adjudicate two aspects: First, as to when, did the chargeable event occur? Second, whether in the given circumstances, the petitioners claim for refund of excess stamp duty and transfer duty was sustainable?

23.3 Insofar as the first aspect was concerned, the Court ruled that the chargeable event, for levy of stamp duty, would occur on the date of execution of the instrument and not on the date of adjudication or the date of presentation, which, in that case were events

which occurred prior to the date of the notification, whereby the stamp duty and transfer duty charges were reduced by the State.

23.4 Insofar as the second issue was concerned, the Court held that Section 52 which allows, inter alia, for refund of stamp duty in cases where a person, inadvertently, uses on an instrument chargeable with duty, a stamp of a description other than that prescribed for such an instrument — was available to the petitioners for refund of stamp duty. According to the Court, if the date of execution of the instrument is taken as the date which would determine as to what would be the admissible stamp duty that had to be levied on the instrument (i.e. the conveyance) then, the petitioner's case would fall within the ambit of the provisions of Section 52 of the Act, as excess duty had been, inadvertently, paid by the petitioners since the notification reducing the rate of stamp duty and transfer duly stood published prior to the execution of the instrument in that case.

23.5 This apart, the Court observed that even if it is assumed that Section 52 of the Act was not applicable, the petitioners would be entitled to refund of stamp duty as the State could not retain the stamp duty in view of the provision of Article 265 of the Constitution. The relevant observations made by the Court are as follow:

> *"….11. Even as regards applicability of Section 52 of the Act, the matter can be looked at in another perspective. The "chargeable event" being the date of execution of the document and if on that date higher than the admissible stamp duty is levied or collected, it would fall within the ambit of excess payment being "inadvertently" collected on the said date from the petitioner. Thus, it could even be urged that Section 52 of the Act was applicable. Further as noticed earlier dehors the applicability of Section 52 of the Act, stamp duty collected without authority of law cannot be retained in terms of Article 265 of the Constitution of India in the absence of any statutory provision requiring refund application to be submitted within a specified period or prohibiting the refund unless made within the specified period. In the instant case, it may be noted, that application for refund had been made within the stipulated period of six months under Section 52 of the Act….."*
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> *(Emphasis is mine)*

23.6 Having regard to the facts which obtained in Piyush Aggarwal's case and enunciation of law by the Court, I am not persuaded to hold that the judgment requires reconsideration, as was contended by Mr. Ramesh Singh. To my mind, the ambit and scope of Article 265 of the Constitution is not restricted only to cases where the Court finds that the levy imposed by the State is illegal or unconstitutional. As adverted to above, Article 265 of the Constitution, not only imposes a bar on imposition of tax without the authority of law, it also imposes a prohibition on collection of tax without the authority of law.

23.7 In my opinion, the other contention of Mr. Ramesh Singh that the Court in Piyush Aggarwal's case failed to notice the legal regime of the Act, is also not correct in view of the fact that the Court did notice the relevant provisions, which were necessary for adjudication of the matter at hand.

23.8 The other submission of Mr. Ramesh Singh, that the Act is a complete code by itself and that refund could only be ordered in respect of instances provided in the Act, has been answered by me hereinabove. The rationale employed by me is that the scheme of Chapter V of Act which adverts to allowances and refunds is required to be interpreted in a manner that the Statute does not fall foul of the Constitution.

23.9 Therefore, in that sense, the other argument of Mr. Ramesh Singh that the Collector of Stamps is a creature of the Statute and can, therefore, only operate within its periphery, has to be answered, in my opinion, in the same vein. While one cannot quibble with the proposition that the statutory authority has to necessarily act within the ambit of the statute which forms the basis of its nativity, the extent and amplitude of its power will, however, be governed by the provision of the Constitution. There being no prohibition in the Act for grant of refund for lost stamp paper, surely the Collector of Stamps cannot collect or retain what lawfully does not belong to the State.

24. Interestingly, our neighbouring country i.e. Pakistan, which has a somewhat similar Statute, dealing with the levy collection and refund of stamp duty, is beset with difficulties which are akin those faced by applicant(s), in our country, seeking refund of stamp duty on account of loss of stamp paper. This aspect, I

came across upon a judgment dated 23.02.2016, delivered by the Lahore High Court, in Writ Petition No.27935 of 2012, titled: Aziz Ullah Khan Vs. Government of the Punjab etc., being brought to my notice.

24.1 The Court in that case was faced with a question as to whether refund of stamp duty ought to be ordered in a case where the petitioners had misplaced i.e. lost the stamp papers.

24.2 The Additional Advocate General resisted the writ petition, broadly, on the ground that there was no provision for grant of refund of stamp paper, in cases where it was lost and that if such a relief was granted, it would result in loss to the national exchequer.

24.3 I must confess that, though, in that case, the Court noticed the existence of Rule 5 of the Punjab Non Judicial Stamp Refund, Renewal and Disposal Rules, 1954 which provided for refund of stamp duty in case of its loss, albeit, in specified circumstances i.e., where stamp paper was stolen or lost in transit by Government officials. The Court, after noting that there was a discrimination, inasmuch as, Rule 5 permitted write off where stamp papers were lost by public functionaries, whereas, a similar facility was not given to private person, went on to deal with the other arguments, that is, whether it could order refund in exercise of its constitutional powers in the absence of specific provision for refund, the possibility of loss to the national exchequer, as also misuse of stamp paper, in the following manner:

> *"…..It is very strange to note that the public functionaries, in the event of loss of Stamp Papers in transit, have been bestowed with a remedy to seek write off whereas the private persons have not been provided with such facility. This fact alone renders it crystal clear that a discriminatory treatment is being given by the public functionaries to their own brethren in the event of loss of stamp papers whereas the request of a member of society is not being entertained merely for the reason that the original are not available. Such approach, being in conflict with the clear cut mandate given under Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, cannot be encouraged rather deserves to be discouraged.*

10. Learned Additional Advocate General has adopted

the plea that when the statute has not allowed any refund in case of loss of Stamp Papers the same cannot be permitted by this Court in exercise of Constitutional jurisdiction vested under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. In this respect I am of the view that according to the golden principle of interpretation of a statute, a beneficial approach should be followed. As far as the case in hand is concerned, when a via media has been provided in the event of loss of Stamp Papers during transit by the public functionaries, how the petitioner can be deprived of such facility. It is not the case of the respondents that the case of the petitioner is not covered under Rule 32 of the Rules, 1954. The apex Court of the country, in H.R.C. No.40927-S of 2012 Application by Abdul Rehman Farooq Pirzada (PLD 2013 SC 829) while highlighting the principles of interpretation of statutes by the superior Courts has inter-alia held as under:-

> *"The interpretation cannot be narrow and pedantic but the Courts' efforts should be to construe the same broadly, so that it may be able to meet the requirements of an ever changing society. The general words cannot be construed in isolation but the same are to be construed in the context in which they are employed. In other words, their colour and contents are derived from the context."*

Further, a Full Bench of this Court in the case of Rub Nawaz Dhadwana Advocate etc. v. Rana Muhammad Akram Advocate etc. (W.P. No.16793 of 2014) while dealing with the powers of the superior Courts to abridge the distance between the legislator and the public-at-large has inter-alia observed as under:

> *"The judge must reflect these fundamental values in the interpretation of legislation. The judge should not narrow interpretation to the exclusive search for subjective legislative intent. He must also consider the "intention" of the legal system, for the statute is always wiser than the legislature. By doing so the judge gives the statute a dynamic meaning and thus bridges the gap between law and society."*

If refusal on the part of the respondents to issue refund in favour of the petitioner is adjudged on the touchstone of aforequoted cases, I am of the humble opinion that the same is not tenable for the reason that when the legislator has framed rules for refund of spoiled/unused/lost Stamp Papers, how the respondents can interpret said rules according to their own whims just to damage the case of the claimants.

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In this scenario, the objection raised by the learned Additional Advocate General that the refund is not permissible without production of original Stamp Papers is of no worth at all. The bonafide of the petitioner is apparent from the fact that after loss of original Misplaced Stamp Papers he not only reported matter to the Police with promptitude but also got published proclamation in daily "Smaj" and having done so he, with a view to avoid further delay towards execution of sale deed, got issued fresh Stamp Papers to complete the sale transaction. A copy of the sale deed provided by the above named deed writer shows that the Misplaced Stamp Papers were used for the said purpose but due to their loss during journey sale deed could not be registered. The logic behind issuance of refund against the spoiled, destroyed or unused Stamp Papers is to accommodate a person who has not used those Stamp Papers for the purpose for which the same were issued. In the case in hand after admission by the respondents that neither the Misplaced Stamp Papers were used for any other purpose nor anybody else has claimed refund in that regard, the request of the petitioner cannot be turned down merely on the ground that he could not produce the original Misplaced Stamp Papers before the competent authority. If the original Stamp Papers were available with the petitioner there was no necessity for him to incur another sum of more than one million rupees for the same purpose.

12. Learned Additional Advocate General has forcefully argued that worth of the Stamp Papers is equal to those of currency notes and no refund against the currency notes is permissible in case where the original are not produced. To the extent of worth of Stamp Papers equal to currency notes, I agree with the learned law officer, however, to the extent of criteria explained by him regarding refund of currency notes I have contrary view for the reason that in case of currency notes its custodian is always considered its lawful owner and it cannot be proved as to which specific

currency note was in possession of a particular person whereas in the case of Stamp Papers entitlement of a person can be certified firstly from the National Exchequer where price of the Stamp Papers has been deposited, secondly from the register of Stamp Vendor and thirdly from the authorities before whom the same was presented. Insofar as the case in hand is concerned, all the authorities have admitted that the Misplaced Stamp Papers were issued to the petitioner after payment of consideration and those were never utilized for any other purpose. In this view of the matter, the objection posed by the learned Law Officer is hereby spurned.

13. Now taking up plea of learned Additional Advocate General that in case refund is allowed in absence of original Stamp Papers not only scrupulous persons would be able to use them for any other purpose but they would also succeed to get refund while causing colossal loss to the National Exchequer. In this regard, I am of the view that strict criteria can be laid to avoid such apprehension but in no way same can be made a ground to deprive a person from refund of the amount whose claim has been admitted by the relevant forums. In case the respondents have the apprehension that the Misplaced Stamp Papers were or would be used for any other purpose they can proceed against the culprit under the relevant law in addition to getting registered a criminal case against the petitioner.

14. Admittedly, the Misplaced Stamp Papers were used for preparation of sale deed as is evident from the recitals of copy of sale deed (Annexure-C of this petition), thus, the possibility of using the Misplaced Stamp Papers for any other purpose is totally ruled out. Moreover, execution of sale deed by the petitioner on subsequently purchased Stamp Papers also eliminates said apprehension as the land once sold cannot be resold on the strength of Stamp Papers got issued in that regard.

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16. The learned Additional Advocate General has mainly opposed prayer of the petitioner on the premise that there is no provision either in the Act, 1899 or in the Rules, 1954, regarding a private person, in case of loss of original Stamp Papers. In this regard, I am of the view that in view of principle ubi jus ibi remedium (where there is a right there is a remedy) nobody can be left remediless. The said principle has also been

elucidated by the apex Court of the country in the case of Sarfraz Saleem v. Federation of Pakistan and others (2014 PLC C.S. 884) in the following words:-

> *"In these circumstances, lack of exercise of jurisdiction by the High Court in the present case seems to be contrary to the well accepted principle "ubi jus ibi remedium" (where there is a right there is a remedy) and the spirit of Articles 4 and 10-A of the Constitution, meant to safeguard the rights of every individual/person to be dealt with in accordance with law"*

The afore-quoted portion of the judgment of apex Court of the country renders it more than clear that nobody can be left remediless. Moreover, while dealing with the matters of masses they cannot be penalized due to stagnant attitude of the legislator about new Issues. Insofar as case in hand is concerned, request of the petitioner deserves sympathetic consideration for the reason that after completion of codal formalities his request has been turned down mainly on the ground that original Stamp Papers have not been produced. At the cost of repetition it is observed that when the legislator itself has held that Collector can refer matter of refund against unused stamp papers even without producing the original one the stubbornness on the part of competent authority in this regard is not understandable. Public functionaries are supposed to eliminate difficulties of public-at-large but when they themselves try to impede their way to have their legitimate right the entire threadbare of our society would be devastated.

17. Now taking up plea of learned Additional Advocate General that if refund is allowed even in cases where the original Stamp Papers are not produced the National Exchequer would suffer badly, I am of the view that the respondents are not going to pay anything either from their own pockets or from the National Exchequer either they have to repay the amount twice deposited by the petitioner. Had the petitioner claimed anything in addition to that he deposited at the time of issuance of Stamp Papers then the said contention would have some substance. Considering from another angle in the cases where spoiled or unused Stamp Papers are returned by the persons concerned they are issued refund without taking into consideration that the said amount is being repaid from the National Exchequer. This fact alone amounts to discrimination on the part of competent authority….."

(Emphasis is mine)

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25. As would be noticed, the Aziz Ullah Khan's case, on facts, was pari materia with the facts obtaining in the instant case. In that case, the stamp paper was lost, which was required for consummation of the sale transaction concerning the subject immovable property. The petitioner, as in the instant case, had bought a new stamp paper and had gone on to consummate the sale transaction qua the very same property.

26. I may also indicate that insofar as other cases cited by Mr. Ramesh Singh are concerned, they are, in fact, not applicable to the facts and circumstances arising in the instant case. One cannot but state that the proposition of law as enunciated in Mafatlal Industries Ltd. & Ors. vs. Union of India & Ors.; State of Maharashtra & Ors. vs. Swanstone Multiplex Cinema Pvt. Ltd. and Cooch-Behar Contractors' Association and Ors. vs. State of West Bengal & Ors. still hold the field.

26.1 However, dealing with the last case first i.e. Cooch-Behar Contractors' Association case, that was a case where the appellants before the Supreme Court sought exclusion of certain components, which had been included in the expression "contractual transfer price", which in turn, determined the tax that an assessee had to pay under works contract. In this context, the Court was called upon to interpret, inter alia, the provisions of Section 6D of the Bengal Finance (Sales Tax) Act, 1941 as amended by West Bengal Act 4 of 1984. The Court ruled that nothing could be excluded from contractual transfer price over and above that was indicated in Clauses (a) to (e) of sub-section 2 of Section 6D of the aforementioned Act. It is in this context that the Court observed that Section 6D was a self contained provision. In my view, there is nothing in the judgment, which would help the cause of the respondents.

26.2 Likewise, the judgment of the Supreme Court rendered in State of Maharashtra & Ors. case, does not support the respondent's case. This was a case where the respondent company, which was the owner of multiplex cinema theatre had collected entertainment tax at rate of 45% during the period when it was either not liable to pay such tax or was required to pay tax at a concessional rate i.e., 25%. The State attempted

to reclaim the benefit, which had accrued to the respondent company as they had recovered excess entertainment tax from the cinema goers. Consequently, demand notices were issued by the State in that behalf. The demand notices issued were challenged. The High Court allowed the writ petition. The Supreme Court reversed the decision of the High Court.

26.3 While doing so, the Supreme Court made an interesting distinction between the doctrine of unjust enrichment as opposed to doctrine of retention. While drawing a distinction between the two concepts, the Supreme Court noticed several judgments, including the judgment rendered by the Court in Mafatlal Industries Ltd. case. Pertinently, the Court, while allowing the appeal of the State, directed the State to remit undue benefit obtained by the respondent company to a voluntary or charitable organization, since, the State during that period, could not have levied or collected the tax from the respondent company. This aspect of the matter is reflected in Paragraphs 32, 33, 36 & 37. For the sake of convenience, the same are extracted hereafter:

> *"…32. In a given case, this Court in exercise of its jurisdiction under Article 142 of the Constitution of India may also issue other directions, as has been done in Indian Banks' Assn. v. Devkala Consultancy Service [(2004) 11 SCC 1] in a similar situation where it was difficult for the Court to direct refund of a huge amount to a large number of depositors from whom the bank had illegally collected, this Court directed that the amount be spent for the benefit of the disabled in terms of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. This Court may take recourse to such a procedure as the State also having granted exemption was not entitled to collect the duty. In other words, it having granted an exemption, was not legally entitled thereto. We think that it would be a better course, as stricto sensu, Article 296 of the Constitution is not applicable.*
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> *33. We are passing this order keeping in view the peculiar situation as in either event it was cinema-goers who had lost a huge amount. It would be travesty of justice if the owners of the cinema theatre become eligible to appropriate such a huge amount for their own benefit. To the aforementioned*

extent, doctrine of unjust enrichment may be held to be applicable. A person who unjustly enriches himself cannot be permitted to retain the same for its benefit except enrichment. Where it becomes entitled thereto the doctrine of unjust enrichment can be invoked irrespective of any statutory provisions.

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36. It may be true that hereat we are not concerned with refund of tax but then for enforcement of legal principles, this Court may direct a party to divest itself of the money or benefits, which in justice, equity and good conscience belongs to someone else. It must be directed to restitute that part of the benefit to which it was not entitled to.

37. We, therefore, direct that the State shall realise the amount to the extent the respondent had unjustly enriched itself and pay the same to a voluntary or a charitable organisation, which according to it is a reputed civil society organisation and had been rendering good services to any section of the disadvantaged people and in particular women and children. We would request the Hon'ble the Chief Minister of the State to take up the responsibility in this behalf so that full, proper and effective utilisation of the amount in question is ensured…"

(Emphasis is mine)

26.4 Insofar as Mafatlal Industries Ltd. case is concerned, the Supreme Court was considering the scope, ambit and extent to which doctrine of unjust enrichment would apply, the Court laid down various propositions of law, which I need not advert to as none of them, in my opinion, would help the cause of the respondent.

26.5 I may, however, indicate that the Court, inter alia, ruled that where the provisions of a statute provided for refund, the refund, if any, would be granted in accordance with the statute. The Court was, amongst others, considering the provisions of Section 11B of Central Excises Act and Section 27 of the Customs Act.

26.6 Likewise, Sri Maganti Suryanarayana case cited for the proposition, that there is no inherent jurisdiction vested in the Collector of Stamps to grant refund as he

> *is a creature of the statute or the judgment rendered in Govt. of A.P. & Ors. vs. P. Laxmi Devi (Smt.) case, cited for the proposition that there is no equity in tax are propositions, which have held the field for so long that they appear to be cast in stone. Having said so, the foregoing discussion would show that these propositions would not impede the cause of the petitioners, given the situation obtaining in the instant case."*

8. Thus, in paragraph 19, the learned Single Judge posed a question for his consideration whether the circumstances in which the refund was prayed for by the appellants herein, would be a relevant consideration for ordering refund of the said amount. In other words, the learned Single Judge asked a question to himself whether the court, in such circumstances, should fold its hands and deny relief to a person, who has lost the e-stamp paper, only because the draftsman has omitted the use of such expression explicitly in the Statute.

9. After an exhaustive discussion on various aspects of the matter, the learned Single Judge thereafter proceeded to draw a fine distinction between the 'doctrine of unjust enrichment' as opposed to 'doctrine of retention'. Ultimately, the learned Single Judge allowed the writ petition in part.

10. The appellants herein being dissatisfied with non-grant of interest on the sum of Rs. 28,10,000/- preferred Letters Patent Appeal. The appeal Court dismissed the Letters Patent Appeal holding as under:-

> *"7. As no arguments were canvassed by the appellant (original petitioner) before the learned Single Judge for payment of interest, the said issue has not been decided. For the first time, this issue of payment of*

interest upon Rs.28,10,000/- has been raised. Hence, we see no reason to entertain this Letters Patent Appeal. The principal amount has already been ordered to be refunded. Petitioner can file a review application if he has argued and the point is not decided about interest upon the principal amount before the learned Single Judge.

8. Counsel for the respondent has pointed out that the issue of interest was never raised by the appellant(original petitioner) when the writ petition was argued by the original petitioner."

11. The appeal Court seems to have taken the view that the issue as regards payment of interest was sought to be raised for the first time in appeal and had not been seriously raised before the learned Single Judge.

12. In such circumstances, referred to above, the appellants are here before this Court with the present appeal.

13. We heard Mr. Abhishek Puri, the learned counsel appearing for the appellants and Ms. Jyoti Mehandiratta, the learned counsel appearing for the respondents.

14. The short point that falls for our consideration is whether in the facts and circumstances of the case, the appellants herein are entitled to claim interest on the refunded amount of Rs.28,10,000/- referred to above.

15. The submission of the learned counsel appearing for the respondents that there is no provision in the statute for the payment of interest on refund of the amount of the e-stamp paper that was lost by the appellants herein, is without any merit. The subject General Mandamus is a salutary advancement

of the law, calculated to insulate and protect a citizen from unfair treatment by the State.

16. The concept of awarding interest on delayed payment has been explained by this Court in the case of *Authorised Officer Karnataka Bank v. M/s R.M.S. Granites Pvt. Ltd. & Ors.* in Civil Appeal No. 12294 of 2024, we quote the following observations:-

> *"It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say ten years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B ten years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B. [See: Alok Shanker Pandey v. Union of India : AIR 2007 SC 1198.]"*

17. Thus, when a person is deprived of the use of his money to which he is legitimately entitled, he has a right to be compensated for the deprivation which may be called interest or compensation. Interest is paid for the deprivation of the use of money in general terms which has returned or compensation for the use or retention by a person of a sum of money belonging to other.

18. As per *Black's Law Dictionary* (7th Edn.): "interest" is the compensation fixed by agreement or allowed by law for use or detention of money or for the loss of money of one who is

entitled to its use, especially, the amount owned to a lender in return for the use of the borrowed money.

19. As per *Stroud's Judicial Dictionary of Words and Phrases* (5th edn.): interest means, *inter alia*, compensation paid by the borrower to the lender for deprivation of the use of his money.

20. In the case of *Secretary, Irrigation Department, Government of Orissa v. G.C. Roy*, (1992) 1 SCC 508, a Constitution Bench of this Court opined that a person deprived of use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. This is also the principle of Section 34 of the Civil Procedure Code.

21. The essence of interest as held in the case of Lord Wright in *Riches v. Westminister Bank Ltd.*, 1947 (1) ALL ER 469, at page 472, is that it is a payment, which becomes due because the creditor has not had his money at the due date. It may be recorded either as representing the profit he might have made if he had had the use of the money, or, conversely, the loss he suffered because he had not that use.

22. In the case of *Commissioner of Income Tax v. Dr. Sham Lal Narula*, AIR 1963 Punjab 411, a Division Bench of the High Court of Punjab articulated the concept of interest as under:-

> *"The words 'interest' and 'compensation' are sometimes used interchangeably and on other occasions they have distinct connotation. "Interest" in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, 'interest' is understood to mean the amount which one has contracted to pay for use of borrowed money. ..... In whatever category "interest" in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money belonging to another, or for the delay in paying money after it has become payable."*
>
> **(Emphasis supplied)**

23. The appeal filed against aforesaid decision was dismissed by this Court in *Sham Lal Narula Dr. v. CIT*, AIR 1964 SC 1878.

24. In the case of *Hello Minerals Water (P) Ltd. v. Union of India*, (2004) 174 ELT 422, (paras 15 and 16), a Division Bench of the Allahabad High Court explained the concept of interest as under:-

> *"15. We may mention that we are passing the direction for interest since interest is the normal accretion on capital. Often there is misconception about interest. Interest is not a penalty or punishment at all.*
> *16. For instance, if A had to pay a certain sum of money to B at a particular time, but he pays it after a delay of several years, the result will be that the money remained with A and he would have earned interest thereon by investing it somewhere. Had he paid that amount at the time when it was payable then B would have invested it somewhere, and earned interest thereon. Hence, if a person has illegally retained some amount of money then he should ordinarily be directed to pay not only the principal amount but also the interest earned thereon.*
>
> *Money doubles every six years (because of compound interest). Rs. hundred in the year 1990 would become Rs. two hundred in the year 1996 and it*

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will become Rs. 400 in the year 2002. Hence, if A had to pay B a sum of rupees 100 in the year 1990 and he pays that amount only in the year 2002, the result will be that A has pocketed Rs. 300 with himself. This clearly cannot be justified because had he paid that amount to B in the year 1990, B would be having Rs. 400 in the year 2002 instead of having only Rs. 100/-. Hence, ordinarily interest should always be awarded whenever any amount is detained or realized by someone, otherwise the person receiving the amount after considerable delay would be losing the entire interest thereon which will be pocketed by the person who managed the delay, it is for this reason that we have ordered for payment of interest alongwith the amount realized as export pass fee."

INTEREST IS NORMAL ACCRETION ON CAPITAL

25. If on facts of a case, the doctrine of restitution is attracted, interest should follow. Restitution in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order what has been lost to him in execution of decree or order of the Court or in direct consequence of a decree or order. The term "restitution" is used in three senses, firstly, return or restoration of some specific thing to its rightful owner or status, secondly, the compensation for benefits derived from wrong done to another and, thirdly, compensation or reparation for the loss caused to another.

26. In *Hari Chand v. State of U.P.*, 2012 (1) AWC 316, the Allahabad High Court dealing with similar controversy in a stamp matter held that the payment of interest is a necessary corollary to the retention of the money to be returned under order of the appellate or revisional authority. The High Court directed the State to pay interest @ 8% for the period, the

money was so retained i.e. from the date of deposit till the date of actual repayment/refund.

27. In the case of *O.N.G.C. Ltd. v. Commissioner of Customs Mumbai*, JT 2007 (10) SC 76, (para 6), the facts were that the assessment orders passed in the Customs Act creating huge demands were ultimately set aside by this Court. However, during pendency of appeals, a sum of Rs. 54,72,87,536/- was realized by way of custom duties and interest thereon. In such circumstances, an application was filed before this Court to direct the respondent to pay interest on the aforesaid amount w.e.f. the date of recovery till the date of payment. The appellants relied upon the judgment in the case of *South Eastern Coal Field Ltd.* v. *State of M.P.,* (2003) 8 SCC 648. This Court explained the principles of restitution in the case of *O.N.G.C. Ltd.* (supra) as under:-

> *"Appellant is a public sector undertaking. Respondent is the Central Government. We agree that in principle as also in equity the appellant is entitled to interest on the amount deposited on application of principle of restitution. In the facts and circumstances of this case and particularly having regard to the fact that the amount paid by the appellant has already been refunded, we direct that the amount deposited by the appellant shall carry interest at the rate of 6% per annum. Reference in this connection may be made to Pure Helium Indian (P) Ltd. v. Oil & Natural Gas Commission, JT 2003 (Suppl. 2) SC 596 and Mcdermott International Inc. v. Burn Standard Co. Ltd. JT 2006 (11) SC 376."*
>
> (Emphasis supplied)

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COMPENSATION:

28. The word 'Compensation' has been defined in *P. Ramanatha Aiyar's Advanced Law Lexicon*, 3rd Edition 2005, page 918 as follows:-

> ***"An act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury; the consideration or price of a privilege purchased some thing given or obtained as an equivalent the rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; a recompense in value a recompense given for a thing received recompense for the whole injury suffered remuneration or satisfaction for injury or damage of every description remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly, and proximately caused by at breach of contract or duty; remuneration or wages given to an employee or officer."***

29. In the case of *Union of India through Director of Income Tax v. Tata Chemicals Ltd.*, (2014) 6 SCC 335, this Court held that when the collection is illegal, the Revenue is obliged to refund such amount with interest as money so deposited was retained and enjoyed by it. No discrimination can be shown between the assessee and Revenue in paying interest on the refund of tax. Money received and retained without right, carries with it the right to interest. There being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, the Government cannot shrug off its apparent obligation to reimburse the

deductors lawful monies with accrued interest for the period of undue retention of such monies. Obligation to refund money received and retained without right implies and carries with in the right to interest. The relevant observations are as under:-

> ***"Providing for payment of interest in case of refund of amounts paid as tax or deemed tax or advance tax is a method now statutorily adopted by fiscal legislation to ensure that the aforesaid amount of tax which has been duly paid in prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing Statute. Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, there being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. Whenever money has been received by a party which ex ae quo et bono ought to be refunded, the right to interest follows, as a matter of course."***
>
> **(Emphasis supplied)**

30. Considering the reasons assigned by the learned Single Judge while taking the view that the respondents could not have declined to refund the amount and the fact that the retention of the said amount was for a long time and further the appellants were left with no other option but to approach

the High Court, we are of the view that the appellants are entitled to have interest on Rs.28,10,000/- as under:-

Breakup of the Amount received and accrued interest

Principal Amount : Rs. 28,10,000/- (Rupees Twenty Eight Lakh Ten Thousand Only)

Period	No. of days	Amounts due	Rate of Interest	Interest amount
20.08.2018 (*date of Judgment passed by Ld. Single Judge of the Delhi High Court)* till *29.02.2020 (Receipt of part payment of Rs. 25,29,000/-)*	558 days	Rs. 28,10,000/-	8% p.a.	Rs. 3,43,666.85
30.02.2020 till 08.03.2024 (Date of Fixed Deposit @ 6.5% p.a. created by the Delhi High Court Registry upon deposit of DD by Respondent)	1470 days	Rs. 2,81,000/-	8% p.a.	Rs. 90,535.89
09.03.2024 till 09.08.2024 (Date of dismissal of Application for modification and direction for release of balance amount deposited	153 days	Rs. 2,81,000/-	1.5% p.a. (after subtracting interest rate of the FD created by Delhi High Court Registry)	Rs. 1,766.84
Total interest amount				Rs. 4,35,968.58/- (Rs. Four Lakh Thirty Five Thousand Nine Hundred Sixty Eight and Paise Fifty Eight Only)

31. The respondents are directed to pay an amount of Rs. 4,35,968/- (Rs. Four Lakh Thirty Five Thousand Nine Hundred Sixty Eight Only) towards interest within a period of two months from today without fail.

32. The appeal stands disposed of in the aforesaid terms. Pending application(s), if any, shall also stand disposed of.

.....J.
[J.B. PARDIWALA]

.....J.
[R. MAHADEVAN]

NEW DELHI;
FEBRUARY 18, 2025