



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13113 OF 2022

Manjeet Singh son of Ujagar Singh .. Petitioner

Versus

The Chief Controller Revenue Authority & Ors. .. Respondents

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- Mr. Charanjeet Singh Chandernal, Advocate for Petitioner
- Ms. V.S. Nimbalkar, AGP for Respondents
- Mr. Amol Ghayal, Supervisor, Collector Stamps, Borivali present

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 29, 2026

JUDGMENT:

1. Heard Mr. Chandernal, learned Advocate for Petitioner and Ms. Nimbalkar, learned AGP for Respondents.

2. This Petition is filed on 19.05.2022. At the request of Mr. Chandernal, since the Petitioner was not heard and considering the exigency expressed, Petition is taken up for final hearing by this Court. Mr. Nimbalkar, learned AGP represents all the Respondents. Respondents have filed a detailed affidavit dated 22.12.2022 of Collector of Stamps, Borivali to oppose the Petition.

3. Briefly stated and as argued by Mr. Chandernal, the facts in the present case are in a narrow compass rather they are completely admitted facts. Petitioner signed a letter of allotment for purchase of flat on 07.07.2012 and desired to pay stamp duty on the Agreement

for Sale with regard to the said flat. He therefore purchased electronic stamps of the value of Rs. 3,00,100/- on 23.03.2018. Petitioner's case is that while purchasing the electronic stamps, he committed error in selection of the Scheme Code wherein instead of purchasing and accepting "non-judicial stamps", he incorrectly selected and punched "consolidated stamp duty and Superintendent of Stamps". Admittedly due to this error, Petitioner could not execute the Agreement for Sale and go for registration of the same. This is an admitted position. When Petitioner realized the said error, he filed an Application seeking refund of the aforesaid amount of Rs. 3,00,100/- by following the due process of law and filed Application with the Collector of Stamps, Borivali. He received acknowledgment dated 30.11.2018 of the said Application for refund having been received by the Collector of Stamps, Borivali. However the said Collector of Stamps, Borivali by order dated 17.12.2018 rejected the Application for refund. That order is appended at page No. 19 of the Petition. Said Application of Petitioner stood rejected by the Collector of Stamps on the sole ground that it was made after 8 months and 7 days of the purchase of electronic stamps by Petitioner and under the provisions of Section 43(3) of the Maharashtra Stamp Act, 1958 (for short "**the said Act**"), time frame of six months is stipulated for seeking refund of stamp duty amount for any of the reasons stated therein. On reading the said

order, it is *prima facie* seen that apart from the aforesaid reason, there is no other reason given by Collector of Stamps which *prima facie* means that the Application for refund of Petitioner is rejected solely on the ground of delay of 2 months and 8 days and nothing more. In the said order, the fact that Petitioner has applied for refund of stamp duty on the ground of "wrong head selected" has also been acknowledged.

4. Mr. Chanderpal would submit that being aggrieved he filed an Appeal before Respondent No. 1 i.e. Chief Controller Revenue Authority to assail the order passed by Collector of Stamps dated 17.12.2018. Respondent No. 1 by the impugned order dated 22.11.2021 rejected the Appeal of Petitioner by upholding the order passed by Collector of Stamps dated 17.12.2018 once again solely on the premise that Application for refund made by the Petitioner was delayed by a period of 2 months and 8 days as stated therein. Hence, the present Petition.

4.1. He would submit that the delay of 2 months and 8 days cannot be held against the Petitioner and the State cannot be allowed to enrich itself unjustly on the ground that there has been a delay and forfeit the stamp duty amount which has been wrongly paid by Petitioner. He would submit that Article 265 of the Constitution of India does not allow the State to levy or collect tax except by authority of law and the Respondents in the present case cannot forfeit the

stamp duty amount which has been paid by Petitioner under a wrong head by mistake. He would also persuade me to consider the reason attributable to the delay which is stated in the grounds on account of the health issues faced by the Petitioner. He would submit that appended at Exh. C are the medical records of the Petitioner which deserve consideration. He would submit that in view of the fragile health of the Petitioner for which he was undertaking treatment from the specialist Doctor for orthopedic issues which was the main reason for the delay of 2 months and 8 days. He would submit that medical certificates appended *prima facie* show that Petitioner suffered the medical issues during and after purchase of the said stamps and therefore the delay of 2 months and 8 days ought to have been condoned in the interest of justice and equity. He would therefore persuade the Court to allow the Petition.

5. **PER CONTRA**, Ms. Nimbalkar, learned AGP would draw my attention to the affidavit in reply dated 22.12.2022 filed by Respondent No. 2 - Collector of Stamps, Borivali and submit that there are various reasons for denying the refund of stamp duty to the Petitioner. She would argue that the main reason for rejecting the refund Application was on account of delay and not adhering to the time limit of six months as stipulated by the provisions of Section 48(3) of the said Act. She would submit that Petitioner did not

implead the vendor of his transaction in the proceedings in order to ascertain whether the transaction was effected or otherwise. She would submit that Petitioner has failed to prove whether he has utilized the said stamp duty despite the fact that he is claiming that there was an error in selection of the Scheme Code while effecting online payment of the same. She would submit that the provisions of Section 48(3) are distinctly clear and envisaged that in any case the said Application for refund of stamp duty has to be made within 6 months from the date of purchase of the stamps and the said time frame is sacrosanct. She would vehemently submit that since the Petitioner has failed to prove as to whether he has completed the said transaction of purchase of flat, Petitioner would not be entitled to refund of the stamp duty.

5.1. She would submit that case of the Petitioner falls in the realm of the provisions of Section 48(3) of the said Act and the Petitioner is not entitled to any benefit of the provisions contained in sub-section (1) and (2) of Section 48. Finally she would submit that Petitioner had voluntarily deposited the said stamp duty amount albeit under the wrong head and therefore the allegation of Petitioner that Government has collected tax without authority of law cannot be made applicable to Petitioner's case. She would submit that Petitioner's claim to refer to and rely upon the medical issues faced by

Petitioner and the documents / Doctor's prescriptions relied upon by Petitioner should not be looked into since the said prescriptions and diagnosis pertains to Petitioner's lifestyle diseases and they cannot be the reason for seeking condonation of delay of the stipulated period of 6 months envisaged under Section 48(3) of the said Act.

5.2. In view of the aforesaid submissions, learned AGP would persuade the Court to uphold the twin orders i.e. order dated 17.12.2018 passed by Collector of Stamps, Borivali and order dated 22.11.2021 passed by Chief Controller Revenue Authority, Pune.

6. I have heard the submissions made by the respective learned Advocates at the bar and perused the record of the case with their able assistance.

7. At the outset, it is *prima facie* seen that there is no dispute on the facts in the present case. There is admittedly delay of 2 months and 8 days in filing the refund Application on the part of the Petitioner. Petitioner purchased the stamps on 23.03.2018 and he filed Refund Application on 30.11.2018. The Application ought to have been made within six months i.e. on or before 23.09.2018. However once the Collector of Stamps, Borivali in the impugned order dated 17.12.2018 has held that the Petitioner's Application is delayed by 2 months and 8 days and ought to have made within six months as

contemplated under Section 48(3) of the said Act, then in that case the only issue that requires to be dealt with by this Court in the present Petition would be that of condonation of delay and nothing else.

8. There is no other reason given apart from the aforesaid reason under the provisions of Section 48(3) of the said Act by the Collector of Stamps, Borivali or by the Chief Controller Revenue Authority while passing the twin impugned orders dated 17.12.2018 and 22.12.2021. In this regard, provisions of Section 48(1) become clearly applicable to the present case. Section 48 prescribes the period of limitation for Applications to be made under Section 47 of the said Act where stamps have been used for instrument executed by the party and which are subsequently found to be unfit either by reason of an error or mistake for the purpose for which it was originally intended. Clause (c) of Section 47 and sub-section (2) thereunder is the head under which the present case of Petitioner would be squarely covered. For the purpose of reference, Sections 47 and 48 of the said Act are reproduced below:-

“47. Subject to such rules as may be made by the State Government as to the evidence to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in section 48, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely:

(a) the stamp on any paper inadvertently and undersignedly spoiled, obliterated or by error in writing or any other means

rendered unfit for the purpose intended before any instrument written thereon is executed by any person;

(b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto;

(c) the stamp used for an instrument executed by any party thereto which—

(1) has been afterwards found 1[by the party] to be absolutely void in law from the beginning ;

2[(1A) has been afterwards found by the Court, to be absolutely void from the beginning under section 31 of the Specific Relief Act, 1963 ;]

(2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended ;

(3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed ;

(4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended ;

(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose ;

(6) becomes useless in consequence of the transaction intended to be thereby effected by some other instrument between the same parties and bearing a stamp of not less value ;

(7) is deficient in value and the transaction intended to be thereby effected had been effected by some other instrument between the same parties and bearing a stamp of not less value ;

(8) is inadvertently and undersignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped :

Provided that, in the case of an executed instrument, [except that falling under sub-clause (1A)], no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up [to be cancelled or has been already given up to the Court to be cancelled.]

Explanation.—The certificate of the Collector under section 32 that the full duty with which an instrument is chargeable has been paid is an impressed stamp within the meaning of this

section."

"48. *The application for relief under section 47 shall be made within the following period, that is to say,—*

(1) in the cases mentioned in clause (c)(5), within 3[six months] of the date of the instruments :

[Provided that, where an agreement to sale of immovable property on which stamp duty is paid under Article 25 of the SCHEDULE I, is registered under the provisions of the Registration Act, 1908 and thereafter such agreement is cancelled by a registered cancellation deed for whatsoever reasons before taking the possession of the property which is the subject matter of such agreement, within a period of five years from the date of execution of the agreement to sale, then the application for relief may be made within a period of six months from the date of registration of cancellation deed.]

(2) in the case when for unavoidable circumstances any instrument for which another instrument has been substituted cannot be given up to be cancelled, the application may be made within six months after the date of execution of the substituted instruments;

(3) in any other case, within 6[six months] from the date of purchase of stamps."

8.1. From the above, it is seen that apart from sub-clause (2) of clause (c), sub-clause (4) adverts to a situation where the instrument has not been executed by a material party by his inability or refusal to sign it which renders the instrument incomplete and insufficient. Such is also the case herein. Admittedly, Petitioner's case is that while paying online stamp duty, he has committed an error in selection of the Scheme Code for purchase of the electronic stamp under a completely wrong head altogether. It is Petitioner's case that he was supposed to purchase "non-judicial stamps" for payment of stamp duty but he has inadvertently clicked and selected "consolidated stamp duty and Superintendent of Stamps". He has made a categorical averment

in the Petition that because of the said error and the stamp duty not having paid by him, he could not execute the document further for the purpose of registration. Once this is the case of the Petitioner before the Authority or before the Court, all that is required to be considered is the delay. Admittedly if the stamp duty is paid under a wrong or incorrect head i.e. "consolidated stamp duty and Superintendent of Stamps", it cannot be equated to as the payment made for "non-judicial stamps". Once that is the position, Petitioner has made out a case for refund.

9. In the impugned orders passed by the Collector of Stamps, Borivali and the Chief Controller Revenue Authority, Pune, it is not their case that Petitioner has gone ahead and used the said Challan of payment of stamp duty under the head "consolidated stamp duty and Superintendent of Stamps" for the purpose of execution of the document. It is only in the affidavit in reply filed by learned AGP that the said issue is raised questioning the fact where the Petitioner had indeed executed the subject document on the basis of wrong Challan. Both the Authorities i.e. Respondent No. 2 and Respondent No. 1 while passing the impugned orders have solely based their decision on the ground of delay of 2 months and 8 days and nothing else. They have referred to the provisions of Section 48(3) to reach to the conclusion that the Application for seeking refund of stamp duty ought

to have been made within 6 months from the date of purchase of stamps and since the Application was made by Petitioner after six months there was a delay of 2 months and 8 days, and hence Petitioner's Application stood rejected. Therefore in that view of the matter, Respondents cannot be allowed to improve their case in the affidavit in reply which has been stated and which has been argued by the learned AGP before the Court. Question before the Court is therefore only of delay and nothing else. The aforesaid statutory provisions however *prima facie* aid and assist the Petitioner's cause. Admittedly there is an error on the part of Petitioner and therefore by virtue of the said error, the stamps purchased by the Petitioner could not be used by Petitioner in furtherance of registration of said agreement. Once that is the position, then the only question that arose for determination is whether the delay of 2 months and 8 days can be condoned or whether the provisions of Section 48(3) would be strictly applicable to the Petitioner's case.

10. Present case will have to be considered by referring to the applicable provisions as contemplated by Sections 47 and 48 which are delineated herein above. Clause (c) of Section 47 and more specifically sub-clauses (1), (2) and (4) read with sub-clause (3) of Section 48 are applicable to the present case. The incorrect and wrong head for selecting payment of stamp duty is admittedly an error and

mistake on the part of the Petitioner. This is covered by sub-clause (2) of clause (c) of Section 47. In view of the said error, sub-clauses (1), (4) and (7) will primarily apply to the case of the Petitioner. Admittedly Petitioner has been unsuccessful in using the payment of stamp duty under an incorrect head which is not accepted by the Sub-Registrar of Assurances. Once that is the position, the only avenue available to the Petitioner was to apply for refund of stamp duty due to the aforesaid error. Though the provisions of sub-section (3) of Section 48 do not provide for an outer limit of six months to make the Application, the said provision equally does not state that the Application made beyond the period of six months will not be entertained. Stamp Act is a beneficial piece of legislation and it is seen that there is no provision conferring power of condonation of delay to the Authority under the said Act but equally there is also no provision in the said Act which states that the power of condonation cannot be exercised after the extended period of limitation.

11. On analysis of the Stamp Act, I find that there is no provision which excludes applicability of Section 5 of the Limitation Act, 1963 to the Stamp Act and more particularly under Section 48 of the said Act which provides for the time limit for making Application for refund of Stamp Duty. Though equally speaking Authority constituted under the Stamp Act does not have the power to condone the delay if

Application is made beyond the time specified in Section 48 of the said Act. However it is seen that the merits have not been considered while passing the impugned order. Hence the moot question is '*Is the Petitioner remediless?*'

11.1. In the present case, Petitioner's case is that he applied for refund of stamp duty and due to the delay of 2 months and 8 days, his refund Application has been rejected. However, it is seen that Petitioner had paid stamp duty under a wrong head for a transaction which did not materialize and therefore in view of the aforesaid observations and findings, refund Application made by the Petitioner cannot be denied to him solely on the ground of delay. In the present case, it is seen that there is an inadvertent error and mistake on the part of the Petitioner in payment of stamp duty to the Government which resulted in Government enriching itself unjustly for the said amount. Therefore Petitioner's right to seek refund of such incorrectly paid stamp duty amount must be assessed on the basis of the statutory entitlement of the said amount to the Petitioner and it cannot stand defeated solely on the basis of procedural technicalities. The provisions as argued by the learned AGP even though may bar the remedy for claiming the stamp duty but the right of the Petitioner to seek refund of stamp duty cannot be defeated.

12. Reliance in this regard is also placed on paragraph No. 14 of the decision of the Supreme Court in the case of *Bano Saiyed Parwad* (5th *supra*). Paragraph No. 14 reads as under:-

"14. In Committee-GFIL v. Libra Buildtech (P) Ltd. [Committee-GFIL v. Libra Buildtech (P) Ltd., (2015) 16 SCC 31 : (2016) 3 SCC (Civ) 596] , wherein the issue of refund of stamp duty under the same Act was in question, this Court has observed and held inter alia as under : (SCC pp. 44-45, paras 29 & 32)

"29. This case reminds us of the observations made by M.C. Chagla, C.J. in Kaluram Sitaram (Firm) v. Dominion of India [Kaluram Sitaram (Firm) v. Dominion of India, 1953 SCC OnLine Bom 39 : AIR 1954 Bom 50] . The learned Chief Justice in his distinctive style of writing observed as under in para 19 : [Kaluram (Firm) case [Kaluram Sitaram (Firm) v. Dominion of India, 1953 SCC OnLine Bom 39 : AIR 1954 Bom 50] , SCC OnLine Bom]

'19. ... we have often had occasion to say that when the State deals with a citizen it should not ordinarily rely on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent Judges, as an honest person.'

We are in respectful agreement with the aforementioned observations, as in our considered opinion these observations apply fully to the case in hand against the State because except the plea of limitation, the State has no case to defend their action.

32. In our considered opinion, even if we find that applications for claiming refund of stamp duty amount were rightly dismissed by the SDM on the ground of limitation prescribed under Section 50 of the Act yet keeping in view the settled principle of law that the expiry of period of limitation prescribed under any law may bar the remedy but not the right, the applicants are still held entitled to claim the refund of stamp duty amount on the basis of the grounds mentioned above. In other words, notwithstanding dismissal of the applications on the ground of limitation, we are of the view that the applicants are entitled to claim the refund of stamp duty amount from the State in the light of the grounds mentioned above."

13. In the present case, delay has occurred due to the health reason which is one of the grounds required to be considered which has not

been considered in any of the twin impugned orders passed by the Respondents. That apart the Government cannot unjustly enrich itself by forfeiting the stamp duty amount deposited by Petitioner under a wrong head. I am of the clear opinion that a litigant cannot be penalized for an inadvertent mistake and error whereby he is deprived of his hard earned money to the Government on the basis of such incorrect and wrong step taken by him. I am therefore of the considered view that this is a fit case where interference of this Court is completely warranted in the impugned orders passed by Respondent Nos. 1 and 2 for reconsideration of the Application seeking refund of stamp duty by Petitioner.

14. In view of the my observations and findings, both the impugned orders i.e. order dated 17.12.2018 passed by the Collector of Stamps, Borivali and order dated 22.11.2021 passed by the Chief Controller Revenue Authority, Pune are unsustainable in law and are therefore quashed and set aside. Resultantly, the Application seeking refund of the stamp duty filed by Petitioner on 30.11.2018 stands allowed. Petitioner is entitled to refund of stamp duty as per his Application. All steps taken in furtherance of the said impugned orders are set aside. Respondents are directed to refund the stamp duty amount of Rs. 3,00,100/- to the Petitioner along with simple interest at the rate

of 4% per annum within a period of four weeks from the date of uploading of this judgment.

15. Learned AGP shall convey this order to the concerned Authority for effecting refund as directed. There shall be no delay in effecting the refund. Liberty to Petitioner to apply in case of delay and non-receipt of the stamp duty amount along with interest. Petitioner shall provide his bank details to the Respondent Nos. 1 and 2 along with a server copy of this judgment downloaded from the Bombay High Court website forthwith. If the refund is not effected as directed, Respondent Nos. 1 and 2 shall be held liable for contempt which shall be noted by them.

16. Writ Petition is allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

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