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A.F.R.

Court No. - 37

Case :- WRIT - C No. - 13395 of 2020

Petitioner :- M/S Yogendra Kumar

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Ram Awtar, Mahabir Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Dr. Kaushal Jayendra Thaker, J.

1. Heard learned counsel for the petitioners and learned Standing Counsel for the State.
2. The skeletal facts are that a tender was invited by the respondents to repair different roads in District Mathura. The amount of the said work is not mentioned deliberately to avoid complications. The tender of the petitioner was accepted. The respondent issued a letter of acceptance with a clause that total security along with stamp duty should be deposited within ten days. The petitioner wrote to the respondents that he is supposed to pay stamp duty as per Article 57 (b) Schedule 1 B of the Stamp Act and for a period of eight months, no work order was passed.
3. It is in these circumstances, that the matter assume importance as such the demand would have been made by the Executive Engineers of each District as this issue had arisen before this Court before one and a half decades but it appears that the authorities concerned have not shown that the said decision is binding on them as a similar issue came before this Court before three years and the judgment was struck down as it was beyond the jurisdiction of the authorities to demand the stamp duty beyond Article 57 (b) Schedule 1 B of the Stamp Act.
4. With these factual data, this writ petition is taken up for disposal today as it is covered by the decision of this Court and further

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waste of time during this pandemic of COVID 19 would cause loss to the public and Exchequer.

5. Despite the decisions of this Court way back in the year 2005 in the case of **M/s Strong Construction vs. State of U.P. and others** (Civil Misc. Writ Petition No.35096 of 2004) decided on 22.3.2005 by the Division Bench of this Court and the recent oral order of this Court in Writ C No.52385 of 2015 (**M/s Kishan Traders Vs. State of U.P. and 2 others**) dated 18.7.2017, it appears that the authorities have demanded from the petitioner what is known as stamp duty.

6. It is not the question whether the amount is only Rs.16,670/-. It will have lot of further repercussions as submitted by the learned counsel for the petitioner as letter of acceptance was subjective.

7. Though the petition is belated, this Court has not been made aware whether the contract has already been executed or not. No such averments are made and for 9 months what is the progress is not known.

8. As far as demand of stamp duty is concerned, it is covered by the decision of the Division Bench of this Court in case of **M/s Kishan Traders (Supra)**. The High Court in Case of **M/s Strong Construction (Supra)** had issued a writ of mandamus way back in the year 2005 which read as follows :

"We also issue a writ of Mandamus commanding the respondents not to compel the Petitioners and similarly situate persons, whether they have filed writ petition or not, to pay Stamp Duty on security deposit in question treating as 'mortgage deed' and further to charge Stamp Duty on such 'securities' as provided under Article 57 (b) Schedule 1 B of the Stamp Act."

9. In that view of the matter, the order demanding stamp duty is quashed. The petitioner would be liable to pay the stamp duty as per Article 57 (b) Schedule 1 B of the Stamp Act. The petitioner shall be substituted by subsequent demand which shall be raised.

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In view of the above, this writ petition is allowed.

10. A copy of this order be sent to the Secretary, P.W.D., U.P. who shall issue a circular to the said effect so that persons do not have to approach the Court.

Order Date :- 7.9.2020

DKS