

## S. 49, 50 - Refund

12. From the law noticed above, the legal position that emerges is as follows: (i) Stamp Act is a taxing statute;

- in construing taxing statutes equity and hardship are not relevant, one has to strictly look at the words/ language used and there is no room for searching intendment or of drawing any presumption while construing the provisions of a taxing statute; (iii) in case of ambiguity in charging provisions, the benefit must necessarily go in favour of subject /assessee, but in case of ambiguity in an exemption provision, the benefit of ambiguity must be strictly interpreted in favour of the Revenue/ State. However, if, by a strict construction of the exemption clause, the ambiguity is resolved and the subject falls within the exemption clause then to give full play to the exemption clause a liberal construction may be made.

Some of the legal principles deducible from the decision of the Apex Court, noticed above, are as follows:-

- where the instrument is rendered unfit for the purpose for which it was executed, the claimants can seek refund under Section 49 (d) (2) read with Section 50 (3) of the Stamp Act;
  - where an instrument is executed under order of the court and by the order of the court the instrument is cancelled with liberty to seek refund of the stamp duty paid, benefit of refund is not to be denied on technical grounds of limitation more so because an act of the court is to prejudice none; and
  - where a case for refund of stamp duty can be brought under Section 49(d)(2) read with Section 50(3), an interpretation which advances the cause of justice and is based on principle of equity, should be preferred.

When we read the extracted provision as a whole, what is noticeable is that allowance available under sub-clause (2) of clause (d) of Section 49 of the Stamp Act is for impressed stamps spoiled to execute an instrument which has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended. At this stage, we may observe that though clause (d) uses the word stamp, which is singular, but, by virtue of Section 13(2) of the General Clauses Act, 1897, singular shall include plural, and vice versa, therefore, the word stamp used in clause (d) would include stamps. Thus, once the allowance is for impressed stamps spoiled to execute an instrument, executed by any party thereto, which has been afterwards found unfit for the purpose originally intended, the allowance is for the stamps spoiled to execute that instrument. Whether an allowance would be admissible for any part of the stamps spoiled to execute an instrument which fails in part, that is whether allowance could be claimed for bad part only, is an issue which has not been specifically addressed by the provisions of Section 49(d) of Stamp Act. Can in such circumstances under clause (d) of Section 49 allowance be claimed for the bad part only? The answer to it would have to be rendered upon construction of the provision with reference to the principles governing the rules of interpretation of a taxing statute inasmuch as it is well settled that Stamp Act is a taxing statute.

## Principles governing interpretation of a taxing statute

The principles governing interpretation of a taxing statute have already been noticed by us above, and the same are recapitulated below: (i) in construing taxing statutes equity and hardship is not relevant, one has to strictly look at the words/ language used and there is no room for searching intendment or of drawing any presumption while construing the provisions of a taxing statute; (ii) in case of ambiguity in charging provision, the benefit must necessarily go in favour of subject / assessee but, in case of ambiguity in an exemption provision, the benefit of ambiguity must be strictly interpreted in favour of the Revenue/ State. However, if, by a strict construction of the exemption clause, the ambiguity is resolved and the subject falls within the exemption clause then to give full play to the exemption clause a liberal construction may be made. In the instant case, we have already found above, there is no excess payment of stamp duty on the instrument of lease. Here, after execution of the lease instrument, on account of failure of the demise in part, allowance has been sought. The provisions of the Stamp Act, at least those that have been placed before us, are silent for such an eventuality. In our view, in absence of clarity in the provisions of the Stamp Act with regard to admissibility of an allowance where the instrument fails in part, the claim for allowance would have to be rejected by keeping in mind the general legal principle that in case of ambiguity in an exemption provision, the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State. An allowance though, strictly, cannot be equated with an exemption but for interpretation of an allowance strict rule of interpretation would have to be applied at the threshold to find out whether the subject falls within its ambit or not because the initial burden is on the subject who seeks allowance to make out a case for allowance. For all the reasons recorded above, we respectfully agree with the view of the Full Bench of the Madras High Court in the case of Chief Controlling Revenue Authority, Board of Revenue, Madras vs. B.P. Eswaran and others (*supra*) that Section 49(d) does not contemplate allowance for spoilation of stamps, where a composite instrument embodying rights and liabilities fails only in part and is good for the remaining part. Otherwise also, on simple logic, an instrument executed by spoiling several impressed stamps cannot be dissected to sever out the bad part from the good, so as to enable use of the good. The decision of the Apex Court in *Libra Buildtech's* case (*supra*) does not come to the rescue of the first respondent because in that case the entire instrument was found unfit for the purpose originally intended and was thus cancelled. In the instant case, part of the lease instrument remained operative therefore the instrument did not fail the purpose originally intended.

### In tax matters equity has a limited role.

Doctrine of unjust enrichment is based on equitable principles and has statutory recognition in Sections 65 and 72 of the [Contract](#) Act. As tax is compulsory exaction of money by a sovereign with the sanction of law and is not payment for services rendered or to be rendered, a refund of the tax or the duty paid under a fiscal statute is not to be made unless and until the duty paid is found not payable.

**[State of U.P. vs. M/s. S.J.P. Infracon Limited and another, 2021(6) ADJ 114(DB)]**