



S.E INVESTMENTS LTD V. UNION OF INDIA & ORS

W.P. (C) 2393/2010 & CM APPL

HIGH COURT OF DELHI

Decided on 21.04.2011

RATIO DECIDENDI

No person can be taxed by implication. Before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words.

FACTUAL MATRIX

1. S.E Investment Ltd. (“Petitioner”) was incorporated on 05.03.1992 as a public limited company under the Companies Act, 1956 with an authorized share capital of INR. 20 Lacs (INR 2 Million), subsequently increased to INR 8.5 Crores (INR 85 Million). The Petitioner paid stamp duty on the increase in the authorized share capital.
2. On 15.01.2010, the Petitioner further increased its authorized share capital from INR. 8.5 Crores to INR. 125 Crores (INR 1250 Million) and filed e-Form 5 with Registrar of Companies (“ROC”).
3. On 13.03.2010, the Petitioner submitted an application to ROC for determination of stamp duty on the increase in authorized share capital and sought clarification from the Delhi Stamp Duty Authority regarding payment of stamp duty on increase in authorized share capital.

4. The ROC directed the Petitioner to pay the stamp duty of INR. 18, 75,000 (approximately INR. 1.87 Million) on increase in the authorized share capital by 15.04.2010 failing which the e-form 5 would be treated as invalid and would not be taken on record in terms of Regulation 17 of the Companies Regulation, 1956.
5. The Petitioner filed the present writ petition before the Hon'ble High Court of Delhi.

ISSUE

Whether any additional stamp duty on increase in authorized share capital was payable in accordance with Article 10 of the Schedule IA of the Indian Stamp (Delhi Amendment) Act, 2007?

PETITIONER'S CONTENTIONS

1. That there is no provision in the Indian Stamp (Delhi Amendment) Act, 2007 ("Stamp Act") to pay stamp duty on increase in the authorized share capital.
2. That the Stamp Act is a fiscal statute, it admits a strict construction. Thus, the decision given by the Delhi Stamp Duty Authority overlooks the correct legal position and violates the Article 10 of the Stamp Act.

RESPONDENT'S CONTENTIONS

1. That the phrase "in other cases" in Clause (b) of the Article 10 of Schedule IA would include any subsequent increase in authorized share capital.
2. That the Petitioner had paid duty on earlier increase in authorized share capital and therefore, it cannot refuse to pay stamp duty now.
3. That the Petitioner itself invited the adjudication by the Collector of Stamps and therefore, it was bound by the decision of given by the Collector of Stamps in this regard.

JUDGEMENT

1. The High Court held that there is no provision for charging stamp duty on the increase in authorized stamp duty in Stamp Act.

For further information on any subject raised in this case study, please contact:



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2. A statute authorizing the levy of stamp duty is in the nature of a fiscal statute, hence stamp duty cannot be levied except by the authority of law.

3. The High Court placed reliance on the Supreme Court of India judgment in the case of **AV Fernandez vs. State of Kerala** (AIR 1957 SC 657) and **Commissioner of Wealth Tax, Gujarat-III, Ahmedabad vs. Ellis Bridge Gymkhana** [(1998) 1 SCC 384, wherein the Supreme Court held that no one can be charged by implication or inference or analogy or by trying to probe into the intentions of the legislature and if a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all.

4. The fact that the Petitioner earlier paid stamp duty when the authorized share capital was increased cannot act as an estoppel against the Petitioner. However, Court has clarified that the decision will not enable the Petitioner to claim refund of any stamp duty earlier paid by it for increase in authorized share capital.

CONCLUSION

This ruling has relieved the burden of stamp duty payable on increase in the authorized share capital of a company.