

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 7<sup>TH</sup> DAY OF SEPTEMBER, 2011

BEFORE

THE HON'BLE MR.JUSTICE K. SREEDHAR RAO

**WRIT PETITION NO.8892 OF 2010 (GM-CPC)**

BETWEEN:

SRI K GOVINDE GOWDA  
AGE: 51 YEARS  
S/O.E P VENKATAPPA  
R/O.NO.498/8  
BEHIND SIDDALINGESHWARA TALKIES  
J P NAGAR VI PHASE  
NEAR K R LAYOUT,  
BANGALORE.

...PETITIONER

(BY SRI. M.R. RAJAGOPAL & H.N. BASAVARAJU, ADVS.)

AND:

1. SMT AKKAYAMMA  
AGE: 57 YEARS  
W/O.LATE SHYAMAIAH  
@ DODDASHYAMAIAH  
R/O.NO.278, 74<sup>TH</sup> CROSS  
KUMARASWAMY LAYOUT  
BANGALORE - 560 078.
2. SMT S KANTHAMMA  
AGE: 34 YEARS  
W/O.NAGARAJU  
D/O.LATE SHYAMAIAH  
R/O.NO.73, KANAKANAGAR  
YELECHENAHALLI EXTENSION,  
J P NAGAR POST  
BANGALORE - 560 078.
3. SMT S CHANDRAMMA  
AGE: 31 YEARS  
W/O.AVALAKONDARAYAPPA



D/O.LATE SHYAMAIAH  
R/O.KALLUKUNTE VILLAGE  
YELAGAERE POST  
C B PURA TALUK  
KOLAR DISTRICT.

4. S PREMA  
D/O.LATE SHYAMAIAH  
AGE: 25 YEARS  
R/O.NO.278, 74<sup>TH</sup> CROSS  
KUMARASWAMY LAYOUT  
BANGALORE - 560 078.
5. SMT M CHANDRAMMA  
W/O.LATE M SHYAMAIAH  
@ CHIKKA SHYAMAIAH  
AGE: 48 YEARS
6. SRI M S PRAVEEN  
AGE: 28 YEARS  
S/O.LATE M SHYAMAIAH  
@ CHIKKA SHYAMAIAH
7. SMT M S INDRANI  
AGE: 28 YEARS  
D/O.LATE M SHYAMAIAH  
@ CHIKKA SHYAMAIAH
8. SMT M S BHARATHI  
AGE: 24 YEARS  
D/O.LATE M SHYAMAIAH  
@ CHIKKA SHYAMAIAH
9. SRI M S SANDEEP  
AGE: 22 YEARS  
S/O.LATE M SHYAMAIAH  
@ CHIKKA SHYAMAIAH
10. SRI M S PRAMOD  
AGE: 20 YEARS  
S/O.LATE M SHYAMAIAH  
@ CHIKKA SHYAMAIAH

RESPONDENT NOS.5 TO 10 ARE  
R/O.PUTTENAHALLI



(PUTTENAHALLI PALYA)  
UTTARAHALLI HOBLI  
BANGALORE SOUTH TALUK  
BANGALORE.

11. SRI UMESH  
AGE: 40 YEARS  
S/O.CHIKKAVEERIAH  
R/O.NO.1848, 40<sup>TH</sup> CROSS  
26<sup>TH</sup> MAIN, 9<sup>TH</sup> BLOCK  
JAYANAGAR  
BANGALORE - 11.
12. SRI UMESH  
AGE: 35 YEARS  
S/O.RAMU  
AGED ABOUT 35 YEARS  
R/O.NO.86/A, VASANTHAPURA  
BANGALORE.  
...RESPONDENTS

(BY SRI: J JAGADEESWAR, ADVOCATE FOR R-12,  
SRI: M ERAPPA REDDY, ADVOCATE FOR R-5 TO R-10,  
SRI: GOVINDA SWAMY, ADVOCATE FOR R-1 TO R-3  
IN THE TRIAL COURT - COPY SERVED,  
RESPONDENT NOS.7 AND 11 - SERVED,  
R1, R2 & R4 ARE SERVED THROUGH PAPER PUBLICATION  
SRI: K M NATARAJ, ADDL. ADVOCATE GENERAL ALONG  
WITH SRI: VIJAYAKUMAR, ADDL. GOVT. ADV. FOR STATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226  
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO  
QUASH THE ORDER DATED 17.2.2010 PASSED BY  
LEARNED XXXIII CITY CIVIL JUDGE, BANGALORE ON IA  
NO.8 IN O.S.NO.812/2004 VIDE ANNEXURE-N AND  
CONSEQUENTLY TO ALLOW I.A.NO.8 FILED BY THE  
PETITIONER UNDER SECTION 151 OF C.P.C. PRODUCED  
AT ANNEXURE-M AND M1.

THIS WRIT PETITION COMING ON FOR PRELIMINARY  
HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE  
FOLLOWING:-



**ORDER**

The petitioner is the plaintiff, who has filed a suit for specific performance. The plaintiff produced an insufficiently stamped agreement for sale. An objection was taken. The trial Court directed payment of deficit stamp duty and penalty at the rate of 10 times the duty. The petitioner aggrieved by the said order has filed this petition. This case and other cases similarly placed more importantly involve the question of jurisdiction of the Court to levy penalty U/S.34 of the Stamp Act (for short, 'the Act').

2. The Section 39 of the Act, empowers the Deputy Commissioner to levy penalty of Rs.5/- or in the alternative, the penalty not more than 10 times the duty in his discretion. Whereas, Sec.34 does not endow any discretion, the civil court shall have to levy penalty of Rs.5/- or in alternative 10 times the duty. There is conflict in the provisions regarding discretionary powers of the Deputy Commissioner vis-à-vis the Civil Court. This apparently appears hostile discrimination. In other words, when a party who approaches the Civil Court with insufficiently stamped document the Court could alternatively levy penalty 10 times



the duty. But when a person similarly placed, approaches the Deputy Commissioner, he could alternatively levy penalty not more than 10 times the duty. That means he can levy penalty less than 10 times. This apparently suggests hostile discrimination amongst the defaulters and violates Article 14 of the Constitution of India. Therefore, the Government was issued with notice. The Addl. Advocate General, Sri. K.M.Nataraj, submitted arguments on behalf of the Government.

3. Section 17 of the Act mandates that proper stamp duty has to be paid before or at the time of execution of the document. However, U/Ss.31 and 32 of the Act, a party can approach the Deputy Commissioner for determination of the proper stamp duty and the Deputy Commissioner, upon scrutiny, shall determine the proper duty payable. After such determination, the party can make good the deficit stamp duty and the Deputy Commissioner would certify that proper stamp duty has been paid thereon. However, U/Ss.31 and 32 of the Act, in order to avoid penalty the party should approach the Deputy Commissioner within one month from the date of execution of the document, if it is executed in India.



4. The relevant provision of Section 33(1), which is germane for consideration in this case, is extracted and its purport and effect is stated hereunder:

"33. Examination and impounding of instruments - (1) Every person having by law or consent of parties authority to receive evidence, and every person in-charge of a public office, except an officer of police, before whom any instrument, chargeable in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

The autopsy of Section 33 discloses two kinds of authorities who are entitled to deal with insufficiently stamped documents when it comes to the notice. The first kind of authority is "Every person having by law or consent of parties authority to receive evidence." This obviously suggests a quasi-judicial authority. The second kind of authority is "every person in-charge of a public office, except an officer of police". This obviously suggests a public officer dealing with administrative duties excluding exercise of quasi-judicial powers. The Deputy Commissioner is also



within the meaning of "every person incharge of public office", when the insufficiently stamped document comes to the notice, they have power of impounding the document.

5. Section 34 and proviso (a) which is relevant and germane for consideration in this case is extracted and its purport and effect is stated hereunder:

34. Instruments not duly stamped inadmissible in evidence, etc. - No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Provided that -

- (a) any such instrument not being an instrument chargeable with a duty not exceeding fifteen paise only, or a mortgage of crop Article 35(a) of the Schedule chargeable under clauses (a) and (b) of Section 3 with a duty of twenty-five paise shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make



up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

6. The effect of the above provision discloses that the Court shall not admit in evidence an insufficiently stamped document. However, **under proviso (a) can collect the deficit stamp duty together with a penalty of Rs.5/-, or, when 10 times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;**

7. The provisions of Sec. 37 is extracted and its purport and effect is also stated hereunder:

37. Instruments impounded how dealt with -

(1) When the person impounding an instrument under Section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by Section 34 or of duty as provided by Section 36, he shall send to the Deputy Commissioner an authenticated copy of such instrument, together with a certificate in





writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Deputy Commissioner or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Deputy Commissioner.

The Sec.37(1) refers to, two kinds of authorities referred to in Sec.33, one being quasi-judicial officer, the other being an executive Officer in charge of public office. In the former case the quasi-judicial officer, alike court has to collect the deficit stamp duty and levy penalty as provided u/s 34. In other words, the quasi-judicial authority alike court is empowered to collect duty and levy penalty after impounding the document. However, a person in charge of a public office, not exercising quasi-judicial functions, when notices insufficiently stamped document, he has to send original of the document to the Deputy Commissioner for collecting duty and levying penalty U/s.39. Obviously, a public Officer not exercising quasi-judicial functions, cannot collect and levy duty and penalty.



8. The provisions of Sec.39(1) which is relevant and germane for consideration in this case is extracted and its purport and effect is stated hereunder:

39. Deputy Commissioner's power to stamp instruments impounded - (1) When the Deputy Commissioner impounds any instrument under Section 33, or receives any instrument sent to him under sub-section (2) of Section 37, not being an instrument chargeable with a duty not exceeding fifteen paise only or a mortgage of crop Article 35(a) of the Schedule chargeable under clause (a) or (b) of Section 3 with a duty of twenty-five paise, he shall adopt the following procedure:-

- (a) if he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;
- (b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped he shall require the payment of the proper duty or the amount required to make up the same, together with penalty of five rupees; or if he thinks fit an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees;



Section 39 (1)(b) of the Act, the Deputy Commissioner can collect the deficit stamp duty together with 'penalty of Rs.5/- or if he thinks fit the amount not exceeding 10 times the amount of proper duty or the deficit portion thereof.

9. Sri. K.M.Nataraj, learned Addl. Advocate General, relied upon the decision of this Court rendered by the learned Single Judge in case of **NINGAPPA BHARAMAPPA SOGI -Vs-. GOVT. OF KARNATAKA & ORS.** reported in **ILR 2011 KAR 2484** and the Division Bench decision of this Court in **J.S. PARAMESH -Vs-. SMT. INDIRAMMA** reported in **2008(5) Kar.L.J. 502 (DB).**

10. It is submitted that in Ningappa's case it was argued that the levy of penalty U/s.34 is harsh therefore it is violative of Article 14.

11. In Ningappa's case in para 28 the following observations are made:-

"Issue as regards the conflict between Sections 34 and 39 is not germane for the purpose of this case. Section 39 operates in a different field and Section 34 operates only when the document is presented before the Court and in both the cases, the penalty is leviable,



legislation cannot be invalidated on the ground that there is disparity between these two provisions. Provisions have to be understood in the context and the purpose."

The above observations clearly disclose that the issue regarding conflict between the discretionary powers vested with the Deputy Commissioner U/s.39 of the Act and the rigid mandate for the Court to collect penalty alternatively 10 times the duty without any discretion to reduce the penalty is not considered and decided. The ratio of the judgment upholds the legislative rights to levy duty and prescribe penalty. The issue now for consideration is not the competence to levy duty but the question of discrimination of levy of penalty U/s.34 vis-à-vis Sec.39 of the Act. When a person approaches the deputy commissioner U/s.39 he can have the benefit of the discretion of the Deputy Commissioner to seek a lesser penalty whereas the court does not have the discretion which is vested in the Deputy Commissioner U/s.39. That makes all the difference and suggests a hostile discrimination between the person similarly placed and those who approach the Deputy Commissioner U/s.39 and those who approach the court U/s.34.



12. In J.S. Paramesh's case in para 3 the following observations are made.

"The impugned order was passed by the Trial Court in exercise of the power under the proviso to Section 34 of the Karnataka Stamp Act, 1957. According to clause (a) of the said proviso, when the amount of the proper duty or deficient portion thereof exceeds five rupees, the penalty to be imposed is a sum equal to ten times such duty or portion. There is no discretion granted to the Court to impose a lesser penalty. Hence the observation contained in the order dated 8.12.2005 in Writ Petition No.43172 of 2004 that the Courts have the power to impose as penalty a lesser amount than ten times the amount of proper duty or deficient portion is not correct. The observation is contrary to the clear provisions contained in the proviso to Section 34 of the Karnataka Stamp Act, 1957."

In J.S. Paramesh's case the Division Bench has given the plain interpretation of Sec.34 that the court has no discretion to levy lesser amount than the 10 times of the amount of proper duty. The discrimination and the discrepancy in the provisions of Sec.34 vis-à-vis Sec.39 is not considered and decided.



13. In the light of the above decisions, it is argued that there is no violation of constitutional mandate visiting Sec.34 of the Act.

14. The close reading of Sec.34 and Sec.39 makes it explicitly clear that the insufficiently stamped document could be admitted in evidence **"on payment of the duty with which the same is chargeable or in a case of instrument insufficient stamp of the amount required to make up such duty together with a penalty of Rs.5/- or when 10 times the amount of proper duty or deficit portion there of exceed Rs.5/- of the sum equal to 10 times of such duty or portion.**

15. The Sec.39(1)(b) reads thus:-

- (b) **if he is of opinion that such instrument is chargeable with duty and is not duly stamped he shall require the payment of the proper duty or the amount required to make up the same, together with penalty of five rupees; or if he thinks fit an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees;**

Both the provisions declare that the deficit of the stamp duty together with a penalty of Rs.5/- or in the



alternative 10 times the duty could be collected. Both the provisions does not declare that the highest of the penalty to be collected. In other words, "**whichever is higher**" is not stated in the provision. Therefore, in the discretion of the court and the Deputy Commissioner the penalty that could be collected may be Rs.5/- or the 10 times of the duty imposed. It is not as a rule that the court shall have to levy penalty of 10 times which is only an alternative provision. When the State collects the proper stamp duty U/s.34 there cannot be any grievance of loss of public revenue. Penalty is in the nature of a fine for violating Sec.17 of the Act. The penalty should not be unduly harsh and arbitrary. The law itself provides to levy penalty of Rs.5/- or in the alternative 10 times the duty. Therefore, the court or the Deputy Commissioner should normally levy penalty of Rs.5/- in extreme and exceptional cases a harsher step of levy of penalty should be invoked. **Even while levying a harsher penalty, the court or the Deputy Commissioner has to give special reasons and levy of alternative penalty should not normally be more than double the duty payable.**



16. With regard to the discrimination of the powers vested with Deputy Commissioner and the power of the Court U/S.34 of the Act to levy penalty 10 times the duty, evidently disclose a case of hostile discrimination.

17. Sri. K.M.Nataraj, learned Addl. Advocate General, submitted that when there is conflict between the two provisions in the Statute, the Doctrine of Harmonious Construction should be applied without declaring the provision as unconstitutional. In that view, he relied upon the decision of the Hon'ble Supreme Court in case of **UNION OF INDIA & ORS. V/S. IND-SWIFT LABORATORIES LIMITED** reported in **2011 (4) SCC 635** wherein at paras 17 and 18, the following observations are made.

"17. A statutory provision is generally read down in order to save the said provision from being declared unconstitutional or illegal. Rule 14 specifically provides that where CENVAT credit has been taken or utilised wrongly or has been erroneously refunded, the same along with interest would be recovered from the manufacturer or the provider of the output service. The issue is as to whether the aforesaid word "or" appearing in Rule 14, twice, could be read as "and" by way of reading it down as has been done by the High Court. If the aforesaid provision is read as a whole we find no reason to





read the word "or" in between the expressions "taken" or "utilised wrongly" or "has been erroneously refunded" as the word "and". On the happening of any of the three aforesaid circumstances such credit becomes recoverable along with interest.

18. We do not feel that any other harmonious construction is required to be given to the aforesaid expression/provision which is clear and unambiguous as it exists all by itself. So far as Section 11-AB is concerned, the same becomes relevant and applicable for the purpose of making recovery of the amount due and payable. Therefore, the High Court erroneously held that interest cannot be claimed from the date of wrong availment of CENVAT credit and that it should only be payable from the date when CENVAT credit is wrongly utilised. Besides, the rule of reading down is in itself a rule of harmonious construction in a different name. It is generally utilised to straighten the crudities or ironing out the creases to make a statute workable."

18. Therefore, instead of holding the rigid provision regarding levying penalty 10 times the duty as being unconstitutional, by applying the Doctrine of Harmonious Construction and reading down the provision, it is to be held



that the Courts U/S.34 of the Act shall also have similar power like Deputy Commissioner U/S.39(1)(b) of the Act to levy penalty not more than 10 times if the Court thinks fit and proper.

19. At the cost of repetition, it is to be said that provisions of Sections 34 and 39 gives a distinction to the Court and the authority to levy penalty of Rs.5/- apart from collecting deficit stamp duty or in the alternative can levy penalty not more than 10 times in appropriate cases. The Court or the Deputy Commissioner shall have to take into consideration the literacy of the parties, the nature of transaction and their financial capacity while levying the penalty. However, while levying alternative penalty not more than 10 times, normally the Court or the Deputy Commissioner shall levy penalty double the duty and only in the exceptional circumstances for special reasons, the harsher and extreme step to levy penalty not more than 10 times to be invoked.

In the circumstances, the penalty of 10 times levied by the trial Court is set aside. Penalty of Rs.5/- is levied instead of 10 times the duty.



Accordingly, writ petition is disposed of.

Sd/-  
JUDGE

KM

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