

**HIGH COURT OF MADRAS****Bench: Sanjay V.Gangapurwala, CJ And Justice D.Bharatha  
Chakravarthy****Date of Decision: 19.02.2024**

Writ Appeal Nos. 758, 687, 751, 755 &amp; 851 of 2022

Writ Petition (MD) No. 1824 of 2019 and Writ Petition Nos. 31650 &amp; 31651 of 2016, 8511, 31191 of 2019, 18188 of 2020, 21977, 21979 &amp; 22562 of 2021 and 30363 of 2023

- 1. State of Tamil Nadu Represented by the Principal Secretary to Government Commercial Taxes and Registration Department Secretariat**
- 2. The Inspector General of Registration .....Petitioners**

**Versus****M/s Serene Estate Private Limited .....Respondents****Legislation:**

Sections 2(10) (14), 3, 9(1)(a), 19-A, 2(10), 2(14) of the Indian Stamp Act, 1899

Sections 391-394 of the Companies Act, 1953

Section 44A of the Banking Regulations Act, 1949

Entry 91 of List I, Entry 63 of List II, Entry 33, 44 of List III of the Constitution of India

**Subject:** Challenges to the validity of the Circular dated 20.11.2018 issued by the Inspector General of Registration and G.O. (Ms.) Nos. 29 and 47, pertaining to stamp duty on amalgamation, reconstruction, and merger schemes.**Headnotes:**

Constitutional Law – Interpretation of Fiscal Statutes – Stamp Duty on Instruments of Amalgamation – In a batch of writ petitions and appeals, the High Court of Madras elucidated the scope and applicability of stamp duty on instruments of amalgamation or restructuring under the Indian Stamp Act, 1899, as applicable to Tamil Nadu. The Court examined the definition of 'instrument' and 'conveyance' under the Act and the authority of the state government to reduce stamp duty rates. [Para 6, 7, 8]

Definition of 'Instrument' and 'Conveyance' under Stamp Act – held – The Court clarified that orders of the Court/Tribunal sanctioning schemes of amalgamation/restructuring, along with such schemes appended thereto, are 'instruments' within the meaning of the Act and constitute 'conveyance' as they involve transfer of both movable and immovable assets. The Court rejected the contention that legislative action was necessary to bring such instruments within the ambit of duty. [Para 6.5, 7.3, 7.4]

State's Power under Section 9(1)(a) of Stamp Act – upheld – The Court upheld the state government's power under Section 9(1)(a) of the Act to reduce stamp duty rates. It clarified that the reduction from 5% to 2% of the market value of the immovable property as per G.O.(Ms.) No.29 dated 01.03.2019 is a valid exercise of power. However, the portion of the notification prescribing 0.6% of the aggregate market value of the shares was struck down as it introduced a new mode of computation beyond the scope of Article-23 without legislative action. [Para 8, 9.1]

Retrospective Application of Stamp Duty Reduction – valid – The Court upheld the retrospective application of the reduced stamp duty rates as per G.O.(Ms.) No.47 dated 19.02.2020, emphasizing that clarifications of existing laws are inherently retrospective and the retrospective reduction of duty is within the state's power. [Para 10, 10.1]

Set-off of Stamp Duty Paid in Other States – directed – The Court directed that stamp duty paid while registering the order/scheme of amalgamation in other states should be accounted for while calculating the stamp duty payable in Tamil Nadu. Excess duty, if any, collected shall be refunded, and only the balance amount after setting off the amount already paid can be demanded. [Para 11, 11.2, 11.3]

Decision – Partial Validity of State Notifications on Stamp Duty – The High Court declared the circular No.49282/P1/2018 dated 20.11.2018 and G.O.(Ms.) No.47 dated 19.02.2020 as valid, while striking down the portion of G.O.(Ms.) No.29 dated 01.03.2019 related to the computation of stamp duty on the aggregate market value of shares. The Court directed the authorities to collect stamp duty by calculating 2% of the market value of the immovable property, and to refund any excess duty collected. [Para 12]

Decision – Stamp Duty Adjustment for Payments in Other States – The Court directed that stamp duty paid in other states be considered for set-off against the duty payable in Tamil Nadu, with instructions to refund any excess amounts collected after such adjustment. [Para 12(vi)]

**Referred Cases:**

- Hindustan Lever & Anr Vs. State of Maharashtra & Anr (2004) 9 SCC 438
- Ruby Sales and Services (P) Ltd. & Anr. Vs. State of Maharashtra & Ors 1994 (1) SCC 531
- Mathuram Agarwal Vs. State of Madhya Pradesh (1999) 8 SCC 667
- Goan Real Estate and Construction Limited and another Vs. Union of India and Ors (2010) 5 SCC 388
- P.S.Sathappan (died) by LR's Vs. Andra Bank Ltd., and Ors. (2004) 11 SCC 672
- Jhunjunwala and others Vs. State of U.P.,and Ors (2006) 8 SCC 196
- Commissioner of Income Tax, Udaipur, Rajasthan Vs. McDowell and Company Limited (2009) 10 SCC 755
- Li Taka Pharmaceuticals Ltd., Vs. State of Maharashtra and Ors 1996 SCC Online Bombay 67
- V.V.S. Rama Sharma Vs. State of UP (2009) 7 SCC 234
- Madhu Intra Limited & Anr Vs. Registrar of Companies, W.B. & Ors (2004) SCC Online Calcutta 36
- T.T.Krishnamachari and Co. Vs. Joint Sub-Registrar – I and another 2008 SCC Online Mad 460
- Jupudi Kesava Rao Vs. Palavarthi Venkata Subbarai and Others (1971) 1 SCC 545
- R.Thiyagarajan Vs. Inspector General of Registration (2019) 4 CTC 839
- S N Mathur Vs. Board of Revenue & Ors (2009) 13 SCC 301
- Himalaya House Co. Ltd., Bombay Vs. The Chief Controlling Revenue Authority (1972) 1 SCC 726

- Hero Motors Ltd., Vs. State of U.P. And Ors. AIR 2009 All 93
- Vimpson Precision Pvt. Ltd., and Ors. Vs. State of Gujarat and Ors (1993) 2 GLR 1015
- State of Rajasthan and Ors. Vs. Indus Tower Ltd., and Ors 2023 (1) RLW 216 (Raj.)
- Karnataka Power Transmission Corporation and Anr. Vs. Ashok Iron Works Pvt. Ltd AIR (2009) SC 1905
- New Central Jute Mills Co. Ltd. And Ors Vs. State of West Bengal and Ors AIR 1963 SC 1307

### **Representing Advocates:**

For Appellants: Mr.S.Silambanan, AAG assisted by Mr.Yogesh Kannadasan, Special Government Pleader

For Respondents: Mrs.Inthu Karunakaran; No appearance for RR1 & 2 in W.A.No.687 of 2022; Mr.V.Venkadasalam for Petitioners in W.P.Nos.31650 and 31651 of 2016; Mr.Naveen Kumar Murthi, Senior Counsel for Ms.S.Varsha in W.P.(MD) No.1824 of 2019 and 18188 of 2020; Ms.S.Kamala Rani for Petitioner in W.P.No.31191 of 2019; Mr.S.R.Raghunathan, Senior Counsel for Ms.Preeti Mohan & Mr.K.V.Karthi Subramanian; Mr.P.R.Murali for Petitioner in W.P.No.22562 of 2021; Mr.G.Raghavan, Senior Counsel for Ms.Preeti Mohan in W.P.No.30363 of 2023.

### **COMMON JUDGMENT**

(Judgment made by the Hon'ble Mr.Justice D.Bharatha Chakravarthy)

#### **A. The Petitions:**

These Writ Petitions are filed challenging the validity of the Circular dated 20.11.2018, issued by the Inspector General of Registration in No.49282/P1/2018 and / or G.O.(Ms.) No.29, Commercial Taxes and Registration (J1) dated 01.03.2019 and G.O.(Ms.) No.47, Commercial Taxes and Registration (J1) dated 19.02.2020. When some of the Writ

Petitions were originally pending before the learned Single Judge, interim orders were passed, directing the registration of documents without prejudice to the rights of parties, upon receiving an undertaking affidavit before the registration authorities. Aggrieved by the interim orders, the Writ Appeals are filed. Subsequently, the Writ Petitions themselves were ordered to be posted before the Division Bench of this Court as the *vires* of the notification is also challenged. Accordingly, all these matters are taken up together and disposed of by this common Judgment.

## **B. The Factual Background:**

2.To understand the factual matrix, the facts in W.P.No.30363 of 2023 are as follows:-

2.1. The petitioner is Shriram Capital Limited. By an order dated 09.11.2022, the National Company Law Tribunal (in short ‘the Tribunal’) sanctioned and approved a scheme for amalgamation of the petitioners/companies therein with that of Shriram Capital Limited.

2.2 Whileso, the Inspector General of Registration, State of Tamil Nadu, had issued a Circular No.49282/P1/2018 dated 20.11.2018 and thereby clarified that in view of the Judgment of the Hon’ble Supreme Court in ***Hindustan Lever & Anr Vs. State of Maharashtra & Anr***<sup>1</sup>, the scheme of arrangement of merger, amalgamation or reconstruction approved under the Companies Act 2013 would fall within the definition of ‘conveyance’ and such Court Orders upon being presented for registration become leviable with stamp duty. By the said Circular, the Inspector General of Registration, State of Tamil Nadu issued the following directions:-

“3.Thus the aforesaid judicial pronouncements lead to the following conclusions:-

- (i) Scheme of arrangements submitted by companies and sanctioned by High Court / registered by competent authorities evidencing transfer of property are classifiable under Article 23 of the Indian Stamp Act, 1899.
- (ii) Consequently such instruments / copy of instrument when presented for registration shall not be registered unless it is unequivocally evident that original instrument is duly stamped.

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<sup>1</sup> (2004) 9 SCC 438

(iii) If such instrument is found to be not duly stamped, the instrument presented shall be returned to the Presentant, by clearly explaining the aforesaid legal position through a check slip, and also requiring the presentant to produce evidence as to the duly stamping of the original instrument.”

2.3. Thereafter, the State of Tamil Nadu through the Principal Secretary to Government, Commercial Taxes and Registration Department issued G.O.(Ms.) No.29 dated 01.03.2019, ordering publication of the following notifications which were appended there of:

“ APPENDIX

NOTIFICATION – I

In exercise of the powers conferred by clause (a) of subsection (1) of section 9 of the Indian Stamp Act, 1899 (Central Act II of 1899), the Governor of Tamil Nadu thereby reduces the duty chargeable under the said Act in respect of instruments of transfer of property relating to amalgamation or reconstruction of companies to two percent of the market value of the immovable property or 0.6 percent of the aggregate of the market value of the shares, whichever is higher.

NOTIFICATION – II

In exercise of the powers conferred by section 78-A of the Registration Act, 1908 (Central Act XVI of 1908), the Governor of Tamil Nadu is of the opinion that it is necessary so to do in the public interest hereby reduces the fee payable under the said Act to Rs.30,000/- (Rupees thirty thousand only) in respect of instruments of transfer of immovable property relating to amalgamation or reconstruction of companies.”

2.4. Again, the State of Tamil Nadu, through the Principal Secretary to Government, Commercial Taxes Registration Department issued G.O.(Ms.) No.47 dated 19.02.2020, thereby making the above Notification No.1 to have retrospective effect with effect from 01.04.1956, so that all the schemes relating to amalgamation or reconstruction of companies by the High Court or the Tribunal as the case may be, sanctioned hitherto shall also become eligible for the Stamp Duty reduction granted in the said notification. It is

essential to extract the directions contained in paragraph Nos.3 and 4 of the said G.O., which reads as under:-

“3. The Government have decided to accept the same and accordingly issue the following orders:-

(a) The Stamp Duty reduction granted through the Notification-1 of the Government Order first read above shall be given retrospective effect with effect from 01.04.1956 so that all the Schemes relating to amalgamation or reconstruction of companies by the High Court or the National Company Law Tribunal, as the case may be, sanctioned hitherto shall also become eligible for the Stamp Duty reduction granted in the said Notification:

(b) For the purpose of calculation of Stamp Duty in respect of such schemes, the market value of the immovable property shall be reckoned as the market value set-forth in the scheme of amalgamation or reconstruction of companies or if not set-forth therein, the market value of the Immovable property shall be as per the guideline register prevailing on the date of order sanctioning the scheme:

(c) In respect of such instruments which consist of immovable property situated outside the State of Tamil Nadu, then Stamp Duty shall not be levied on the property which is situated outside the State of Tamil Nadu:

(d) For the purpose of calculation of Stamp Duty, the market value of the shares of an unlisted company shall be reckoned as the market value set-forth in the scheme of amalgamation or reconstruction of companies or if not set-forth therein, the market value of the shares shall be the value of shares found in the audited balance sheets of the companies filed with the Registrar of Companies immediately before the date of order sanctioning the scheme:

(e) If any other instrument is subsequently executed between the same companies under the said scheme for the sole purpose of reducing the terms of the scheme into writing and the subsequent instrument is found to be duly stamped with the duty of two percent of the market value of the immovable property or 0.6 percent of the aggregate of the market value of the shares, whichever is higher, subject to a maximum of Rs.25 crores (Rupees twenty five crores only), the principal instrument of amalgamation or reconstruction shall be deemed to have been duly stamped:

(f) If the principal instrument of amalgamation or reconstruction is found to be duly stamped with the duty of two percent of the market value of the immovable property or 0.6 percent of the aggregate of the market value of the shares, whichever is higher, any other subsequent instrument executed between the same companies under the said scheme for the sole purpose of reducing the terms of the scheme into writing, the subsequent instrument shall be deemed to have been duly stamped.

4. The Government accordingly direct that the notification appended to this order will be published in an extraordinary issue of the Tamil Nadu Government Gazette, dated 19.02.2020. The Works Manager, Government Central Press is requested to send 50 copies to the Government and 1000 copies to the Inspector General of Registration of the gazette in which the notification is published.”

2.5 Prior to the above exercise, the State of Tamil Nadu also tried to bring an amendment to amend the Indian Stamp Act, 1899 (hereinafter the Act) in its application to the State of Tamil Nadu, vide L.A. Bill No.20 of 2012. By the said bill, the very definition of ‘conveyance’ was sought to be amended by specifically including every order made by the High Court under Section 394 of the Companies Act, in respect of amalgamation and reconstruction of Companies and every order made by the Reserve Bank of India under Section 44A of the Banking Regulations Act, 1949 by which, the property



whether movable or immovable or interest in any of the property is transferred *inter vivos*, which is not otherwise specifically provided vide Schedule I. The statement of objects and reasons in respect of the said bill reads thus,

“At present there is no provision in the Indian Stamp Act, 1899 (Central Act II of 1899) for levy of stamp duty on transfer of properties made to facilitate amalgamation or reconstruction of companies by the orders of the High court under Section 394 of the Companies Act, 1956 (Central Act 1 of 1956) or under the order of the Reserve Bank of India under section 44A of the Banking Regulation Act, 1949 (Central Act 10 of 1949), in respect of Banking companies. The Government have, therefore, decided to amend the Indian Stamp Act, 1899 (Central Act II of 1899) so as to provide for levy of stamp duty on the above mentioned transfer of properties to augment the State exchequer.”

2.6 However, the said bill got lapsed and subsequent attempts by way of similar bills also lapsed and the State of Tamil Nadu has not carried out any such amendment to the Indian Stamp Act till today. It is under these circumstances, the present Writ Petitions were filed, either apprehending that the order of the Tribunal will be treated as an instrument and Stamp Duty will be demanded or aggrieved by the actual orders passed, demanding Stamp Duty and Registration charges.

### **C. The Case of the Parties :**

3. The petitioners challenge the circular and the exercise of reduction of Stamp Duty on the grounds, firstly as a colourable exercise of power. The State of Tamil Nadu itself felt that there is no provision in the Act to charge Stamp Duty and registration charges, in respect of such schemes of amalgamation and attempted to amend the Act. The amendment not having fructified into law, by means of all these executive orders, the State had tried to legislate by bringing in the scheme of amalgamation, within the purview of levy of Stamp Duty, as such it is a colourable exercise. Power to levy Stamp Duty on all documents is traceable to Entry 44 of List III of the Constitution of India and as such requires an Act of competent legislature.

3.1 Similarly, the power to prescribe the rate of Stamp Duty is excluded from the Entry 33 of List III and would be either under Entry 91 of

List I by the Parliament or under Entry 63 of List II by the State Legislature. Therefore, without enacting legislation and prescribing the rate of Stamp Duty, by way of an executive circular, under the garb of clarification, the impugned orders are passed. The impugned orders are an attempt by creating a source to levy, prescribe and collect Stamp Duty. More particularly, it is retrospective in nature. The Indian Stamp Act seeks to levy Stamp Duty only on instruments not on the underlying assets that is dealt with. It is also further contended that in many of the cases Stamp Duty is also paid in other states like, 0.7 % in Mumbai (*in W.P.No.31191 of 2019*) and therefore, the same cannot be once again subject to levy in the State of Tamil Nadu. It is further contended that the scheme of amalgamation considers both the assets and liabilities and arrive at the final net value of the shares and therefore, selectively targeting the immovable assets of the transferee company and making assets subject to Stamp Duty is arbitrary and unlawful. In any event, the retrospective application is illegal and further while demanding Stamp Duty retrospectively, the same cannot be on the current market value.

3.2 The State of Tamil Nadu, being the respondent in the Writ Petitions and the appellant in the Writ Appeals contends that Section 2(10) of the Stamp Act defines 'conveyance' which would explicitly cover both movable and immovable properties and attempt of the State of Tamil Nadu to amend the act was only by way of abundant caution so as to avoid any ambiguity and merely because the amendment did not fortify, it would not take away the right to collect the Stamp Duty which it is otherwise entitled to. The declaration made in the Statement of objects and reasons in a lapsed bill would not restrain the State of Tamil Nadu. The Judgment of the Hon'ble Supreme Court in ***Hindustan Lever case*** (cited supra) and prior to that in the ***Ruby Sales and Services (P) Ltd. & Anr. Vs. State of Maharashtra & Ors.***,<sup>2</sup> would make it clear that the schemes of amalgamation etc., would be 'conveyance' within the meaning of Section 2(10) of the Stamp Act and the Orders of the Courts/Tribunals shall be instruments liable for levy.

3.3 Further, Section 9 (1) (a) of the Act empowers the State Government to reduce or remit the Stamp Duty, either prospectively or retrospectively. Therefore, while in the ordinary course, a transfer or conveyance of immovable property would attract 5% Stamp Duty, G.O.(Ms.) No.47 dated 19.02.2020 provides for levy of reduced Stamp Duty, i.e., 2 % of the market value of the immovable property or 0.6 % of the aggregate of the

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<sup>2</sup> 1994 (1) SCC 531

market value of the shares, whichever is higher on the instruments of transfer of property relating to the scheme of amalgamation or reconstruction of companies. The Government Orders are relatable only to the instrument of transfer / conveyance and not relating to transfer of shares and therefore, are well within the ambit of the powers of the State of Tamil Nadu. A reading of Section 9(2)(b) makes it abundantly clear that only in respect of transfer of shares and debentures, the power is vested with the Central Government. Therefore, the challenge to the circular and the Government Orders have to be repelled and the appeals filed by the State of Tamil Nadu ought to be allowed.

#### **D. The Arguments :**

4. We have heard *Mr.G.Raghavan*, learned Senior Counsel appearing on behalf of the petitioner in W.P.No.30363 of 2023; *Mr.S.R.Raghunathan*, learned counsel appearing on behalf of the petitioner in W.P.No.31191 of 2019; *Mr.Naveen Kumar Murthi*, learned Senior Counsel appearing on behalf of the petitioner in W.P. (MD) No.1824 of 2019 and W.P.No.18188 of 2020; *Mr.V.Venkadasalam*, learned counsel appearing on behalf of the petitioner in W.P.Nos.31650 and 31651 of 2016; *Ms.S.Kamala Rani*, learned counsel appearing on behalf of the petitioner in W.P.No.8511 of 2019; *Ms.Inthu Karnakaran*, learned counsel appearing on behalf of the petitioners in W.P.Nos.21977 and 21979 of 2021 and *Mr.P.R.Murali*, learned counsel appearing on behalf of the petitioner in W.P.No.22562 of 2021 and *Mr.S.Silambanan*, learned Additional Advocate General appearing on behalf of the State of Tamil Nadu. Though not a party, the Corporate, Insolvency & Bankruptcy Laws Bar Association also sought to intervene. Considering the question involved in the matter, having general interest in the law and practice in the field, we heard the association, through Senior Advocates *Mr.Aravindh Pandiyan* and *Mr.Srinath Sridevan*, who sought to assist the Court by making their legal submissions.

4.1 *Mr.Raghavan*, learned Senior Counsel leading the arguments in respect of the petitioners would firstly point out to the definition of 'conveyance' under Section 2(10) of the Act and the definition of 'instrument' under Section 2(14) of the Act. Pointing out to Section 3 of the Act, the learned Senior Counsel would submit that it is the instrument which is chargeable with duty. Pointing to Article - 23 of Schedule- I of the Act, the

learned Senior Counsel would submit that the combined reading of the above provisions would make it clear that the term 'conveyance' does not contain any word referring to an order of Court/Tribunal sanctioning the scheme of amalgamation or reconstruction. Even assuming that the definition should be read broadly so as to include such Orders, again, in Article - 23 of Schedule-I, which is the charging provision, there is no language or reference pertaining to the order of Court or Tribunal or the rate of Stamp Duty, which is payable on such orders. Relying upon the Judgment in **Mathuram Agarwal Vs. State of Madhya Pradesh** <sup>3</sup>, the learned Senior Counsel submits that the charging provision in a taxing statute should be clear and unambiguous. Learned Senior Counsel taking this Court through the LA Bill No.20 of 2012, more specifically the language used therein, which clearly stated that it seeks to provide for levy of Stamp Duty and also expressly acknowledges that there is no provision in the Act for levy of Stamp Duty and the Bill being sought to be passed in the year 2012, much after the Judgment of the Hon'ble Supreme Court in the **Hindustan Lever case** would submit that the same would bind the State in as much as it's intent is concerned the Bill was again sought to be introduced in the year 2013 and 2019. But however, what they could not achieve by way of bringing amendment, is now sought to be introduced through circular dated 20.11.2018.

4.2 The learned Senior Counsel would submit that the Circular dated 20.11.2018 is on an incorrect premise, basing on its reasoning on the strength of the Judgment of the Hon'ble Supreme Court in **Hindustan Lever case** (cited supra) which dealt with the Maharashtra Act . The said Act contains specific provision for levying duty for amalgamation scheme. As far as the Judgment in **Ruby Sales and Services (P) Ltd., case**, the same is in respect of the consent decree and not regarding sanctioning the scheme of amalgamation. Relying upon the Judgment of the Supreme court in **Goan Real Estate and Construction Limited and another Vs. Union of India and Ors.**,<sup>4</sup> more specifically paragraph No.31, the learned Senior Counsel would submit that the Judgments should not be read as statutes and should be read in the context. For the same proposition, the learned Senior Counsel would rely upon the Judgment of the Supreme Court in **P.S.Sathappan (died) by LR's Vs. Andra Bank Ltd., and Ors.**,<sup>5</sup> more specifically relying upon the paragraph Nos.144 to 147 of the said Judgment. Therefore, in the context of

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<sup>3</sup> (1999) 8 SCC 667

<sup>4</sup> (2010) 5 SCC 388

<sup>5</sup> (2004) 11 SCC 672

the position prevailing in the State of Tamil Nadu, the Circular by which the Stamp Duty is sought to be levied is without jurisdiction, as there can be no levy by way of an executive action. The learned Senior Counsel also relied upon the Judgment of the Supreme Court in the case of ***Jhunjunwala and others Vs. State of U.P., and Ors.***,<sup>6</sup> more specifically paragraph Nos.10 and 126.

4.3 Further, attacking the Government Orders, the learned Senior Counsel would submit that the remit of the Government under Section 9(1) (a) of the Companies Act is only to reduce the duty and for that the instrument must be chargeable with duty. Secondly, the impugned Government Order charges the instrument with 2 % of the value of the immovable property or 0.6 % of the value of the shares whichever is higher. Therefore, even assuming the Orders of Court / Tribunal sanctioning the scheme of amalgamation to be treated as conveyance, Article 23 which prescribes the rate of duty, does not in any manner refer to shares or their value. Therefore, the Government Order in the guise of reduction introduces wholly a new levy, which is not relatable in any way to the existing provision on conveyance. The Article relating to conveyance only deals with the property which is being transferred and vested and not with respect to the action of amalgamation as such or in respect of any aggregate value of the shares. Therefore, the Government Order is an attempt to impose a new levy dehors legislative action on the transaction of amalgamation and thus it is illegal.

4.4 *Mr.Raghavan*, learned Senior Counsel further submitted that the impugned Government Order states that the duty payable will be the amount 'whichever is higher'. Therefore, it is a colourable exercise of power as it always will not lead to reduction of duty as 0.6% net value of shares can be more than 5% of the duty payable on the immovable property. As a matter of fact, levy of duty in respect of transfer of shares would fall under List I. Therefore, it would be in the realm of Central Government and as such the impugned Government Orders attempting to impose Stamp Duty at the rate of 0.6 % of the aggregate value of the shares is beyond the legislative competence of the State of Tamil Nadu.

4.5 *Mr.G.Raghavan*, learned Senior Counsel would rely upon the Judgment of the Hon'ble Supreme Court in the case of ***Commissioner of Income Tax, Udaipur, Rajasthan Vs. McDowell and Company Limited***,<sup>7</sup>

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<sup>6</sup> (2006) 8 SCC 196

<sup>7</sup> (2009) 10 SCC 755

more specifically paragraph No.21 to contend that to levy tax, duty, cess or fee, legislative action is essential and it cannot be levied or collected in the absence of any legislative sanction by the exercise of power of the State under Article 73 by the Union or under Article 162 by the State. The learned Senior Counsel would further rely upon the Judgment of ***Mathuram Agarwal's case*** (cited supra) more specifically paragraph No.12 to contend that if there is any ambiguity regarding any of the ingredients in a taxing statute, then there is no tax in law. Concluding his submissions, the learned Senior Counsel would submit that the existing definition of conveyance and the levying Article 23 of the Act does not fulfil these requirements in relation to an Order approving the scheme. That's why Article 25 (B) (a) was introduced in the Maharashtra Stamp Act. A similar provision is absent in the State of Tamil Nadu. Only by virtue of the specific amendment, the State of Maharashtra charges the aggregate market value of the shares issued or allotted in exchange or otherwise the amount of consideration paid for such amalgamation. In the absence of the same, the impugned circular and the Government Orders are categorically a colourable exercise of power.

4.6 It is further contended that in the process of amalgamation, what is transferred is a going concern and not the assets or liabilities separately. Therefore, the amalgamation as such stands on a different footing and can never be termed as mere conveyance of immovable or movable properties. When an amalgamation takes place, a going concern is transferred to another and the same is valued on the basis of share exchange ratio. Therefore, to term the same as an instrument that too effecting conveyance by itself is erroneous. The learned counsel would rely upon the Judgment of the Division Bench of Bombay High Court in ***Li Taka Pharmaceuticals Ltd., Vs. State of Maharashtra and Ors.***,<sup>8</sup> more specifically paragraph Nos.32 and 33 of the said Judgment. He would further submit that particularly in the present case, after the amalgamation takes place, the value of the amalgamation is gauged by the Maharashtra authorities on the basis of value of shares and the duty being charged, to once again charge duty merely because one of the immovable property is located within the State of Tamil Nadu would be totally illegal and *ultra vires*, especially when there is no express provision to charge in respect of amalgamation.

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<sup>8</sup> 1996 SCC Online Bombay 67

4.7 *Mr.S.R. Raghunathan*, the Learned counsel also submitting that the source of legislative power is traceable to Entry 44 of List III, would reiterate that the same requires a legislative act. If the instrument falls under the categories mentioned in Entry 91 of List -I, then the power shall only be in the Parliament. The Learned Counsel would rely upon the Judgment in ***V.V.S. Rama Sharma Vs. State of UP***,<sup>9</sup>.

4.8. *Mr. S.R. Raghunathan*, would submit that in his case, the parties had already paid duty under the Bombay Stamp Act, 1958 at the rate of 0.7% of the value of the shares transferred and as such there is no question of levy of duty once again. Again, stressing upon the Judgment of Bombay High Court in *Li Taka's* case, the Learned Counsel would submit that selectively targeting the immovable assets of the transferor company and making the assets subject to stamp duty is illegal.

4.9. *Mr.V.Venkadasalam*, learned counsel appearing on behalf of the petitioners in W.P.Nos.31650 and 31651 of 2016 would rely upon the Judgment of Hon'ble Kolkata High Court in the case of ***Madhu Intra Limited & Anr Vs. Registrar of Companies, W.B. & Ors*** <sup>10</sup>, more specifically on paragraph No.52 would contend that even in respect of an order under Section 394 (1) of the Companies Act, the Hon'ble Calcutta High Court has held that the same will not come within the purview of the expression 'Instrument' or 'Conveyance' for the purpose of levy of Stamp Duty. He would also rely upon the Judgment of the learned Single Judge of this Court in ***T.T.Krishnamachari and Co. Vs. Joint Sub-Registrar – I and another***<sup>11</sup> , to contend that in the matter of transfer effected by virtue of an amalgamation order made under Section 394 (2) of the Companies Act, there is no instrument executed which is chargeable with Stamp Duty. The said legal position is followed by another learned Single Judge of this Court in W.P.(MD).No.4128 of 2010 dated 18.11.2014 and W.P.No.13001 of 2016 dated 20.10.2021.

4.10 It is further contended that even if the order of amalgamation is to be considered as an instrument, even then the said original instrument is with the appropriate High Court or the Tribunal as the case may be. What is supplied to the parties is only a certified copy which is a secondary evidence

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<sup>9</sup> (2009) 7 SCC 234

<sup>10</sup> (2004) SCC Online Calcutta 36

and the same cannot be treated as an instrument. The said order of the High Court or the Tribunal if it is produced before any Court, cannot be refused to be received in evidence as per Section 35 of the Stamp Act. In this regard, the Judgment of the Hon'ble Supreme Court in ***Jupudi Kesava Rao Vs. Palavarthi Venkata Subbarai and Others*** <sup>12</sup> is relied upon.

4.11. Per contra, *Mr. Silambanan*, learned Additional Advocate General appearing on behalf of the State of Tamil Nadu would submit that firstly the contention of the petitioners that Article 23 of the Indian Stamp Act covers only immovable property is fallacious and as per the definition under Section 10, the word 'conveyance' covers movable and immovable properties. Placing strong reliance in the case of ***Ruby Sales and Services (P) Ltd's case*** (cited supra), he would submit that the consent decree was held to be an instrument of conveyance. Thereafter, the Hon'ble Supreme Court considered the very order under Section 394 of the Act in ***Hindusthan Lever(cited supra)*** rejected the contention that it cannot be compared to that of a consent decree and specifically held that it would amount to transfer *inter vivos*. It is also been held that such an order would be an instrument which transfers properties. Reliance is made on paragraph No.31 and 32 of the said Judgment. Further relying upon paragraph No.9 of the same Judgment, he would contend that in an amalgamation what happens is an agreement between the prescribed majority of the shareholders and creditors of the transfer of company, and the transferee company, which is a voluntary act of the contracting parties and has all the trappings of a sale.

4.12. The learned Additional Advocate General further relies upon the Judgment of the Hon'ble Delhi High Court in ***Delhi Towers Limited case*** (cited supra) more specifically paragraph Nos.8.21, 8.22 and 92 to contend that the consistent view of the Hon'ble Supreme Court is that the scheme of amalgamation is already covered in the definition of 'conveyance' under the unamended Act.

4.13. The learned Additional Advocate General would submit that the repeated attempts made by the State of Tamil Nadu was only by way of abundant caution and there need not be any separate or explicit provision. When the scheme of amalgamation is covered by the definition under Section 2(10) read with Article 23 of the Act, the charge at the rate of 0.6 % on the net value of shares is not a levy on transfer of shares within the meaning of Section 9 (1) (b) of the Act, but will be within the remit of Section 9 (1) (a) of the Act.



4.14. The embargo under Section 35 of the Indian Stamp Act also applies to the Registering Officer who is a public officer and as such even when a certified copy is produced it has to be duly stamped. Relying upon the Judgment in W.A.Nos.570 and 571 of 2014 dated 16.09.2021 the learned Additional Advocate General would contend that this Court already approved such an act of the Registering Officer. Further, relying upon the Full Bench Judgment of this Court in ***R.Thiyagarajan Vs. Inspector General of Registration***, it is contended that unless Stamp Duty is paid the instrument would be a still born child and no right would vest upon the person concerned. The learned Additional Advocate General would further rely upon paragraph No.5 of the Judgment of the Division Bench in W.A.No.1792 of 2022 dated 05.08.2022, to contend that even if the registration of the document is not compulsory, still the further purpose of conveying the property, Stamp Duty has to be paid.

4.15 The learned Additional Advocate General would place reliance on the Judgment of the Hon'ble Supreme Court in ***S N Mathur Vs. Board of Revenue & Ors*** to contend that the levy of stamp is on the entire instrument and it cannot be partial and therefore, piecemeal payment of Stamp Duty would be derogation of Section 35 of the Stamp Act. He would contend that while in the normal course, transfer or conveyance of the immovable property would attract 5 % of the value of the immoveable property, the impugned Government Order reduces it to 2 % of the market value or 0.6 % of the aggregate market value of the shares, whichever is higher. Therefore, it would not tantamount to encroaching upon the field of Parliament under Entry 91 of List 1. As a matter of fact, States such as Maharashtra, Karnataka and Gujarat are levying only on the aggregate share value, which would disprove such an argument.

4.16 Amalgamation would not amount to transfer of shares and debentures and therefore, the levy is not barred by Section 9(2) (b) of the Act. Once again placing strong reliance on the ***Hindustan Lever case*** (cited supra), the learned Additional Advocate General would submit that the contention of the petitioners are totally without any merits.

4.17 ***Mr.Aravindh Pandiyan***, learned Senior Counsel, on behalf of the Corporate, Insolvency & Bankruptcy Laws Bar Association would place reliance on paragraph Nos.8.19, 8.20 and 8.21 of the Judgment of the Delhi High Court in ***Delhi Towers Limited case*** (cited supra) and contend that the Hon'ble Supreme Court and the High Court of Delhi have categorically held

that the inclusive definition of conveyance would already take amalgamation within its fold and the amendment made in the Bombay Act is only clarificatory and declaratory in nature. Once the order of the Court, sanctioning the scheme of amalgamation/ restructuring is to be treated as an instrument of conveyance then the question on what basis the Stamp Duty is leviable, is answered by the Bombay High Court in ***Li Taka Pharmaceuticals Ltd., case*** (cited supra) more specifically in paragraph Nos.31 to 33 in the said Judgment.

4.18 The learned Senior Counsel would also further point out the Judgment in ***Himalaya House Co. Ltd., Bombay Vs. The Chief Controlling Revenue Authority*** to contend that the State Government has power to bring in amendments not only in respect of the Stamp Duty but also the mode of computation of the Stamp Duty. He would also place reliance on the Judgment of the High Court of Allahabad in the case of ***Hero Motors Ltd., Vs. State of U.P. And Ors.***, more particularly paragraph Nos.19,20 & 27 of the Judgment to contend that the scheme of arrangement involves business of a going concern and it involves transfer of assets and liabilities as one transaction. Therefore, he would submit that the action of the State in bringing the aggregate market value of the shares as a criteria would be appropriate and cannot be termed as irrelevant or colourable exercise power.

4.19. He would further rely upon the Judgment of the ***Vimpson Precision Pvt. Ltd., and Ors. Vs. State of Gujarat and Ors.***, more specifically paragraph Nos.8 to 14 to contend that the State Government has power to reduce or remit the Stamp Duty prospectively or retrospectively. The learned Senior Counsel also placed reliance on the Judgment of the High Court of Rajasthan at Jodhpur in the case of ***the State of Rajasthan and Ors. Vs. Indus Tower Ltd., and Ors.***, more specifically paragraph Nos.17 and 27 of the said Judgment for the same proposition. The learned Senior Counsel would draw the attention of this Court to the 67th report of the Law Commission of India, in respect of Section 9 of the Indian Stamp Act to contend that the conferment of such power to reduce, remit or to compound the Stamp Duty can hardly be objected to in modern times. The basis for determination of computation of Stamp Duty can be made by the State and in this regard again relevance is placed on paragraph Nos.34, 35, 38 and 40 of ***Hindustan Lever case*** (cited supra).

## **E. The Questions:**

5. Upon consideration of the above, the following questions arise for consideration:

(1) Whether or not the order of the Court sanctioning the scheme of amalgamation / restructuring or merger can be deemed to be an instrument ?

(2) Whether or not amalgamation / restructuring can be termed as a transfer *inter vivos* amounting to conveyance ?

(3) If the Orders are instruments amounting to conveyance, then whether the levy in the present manner, that is, prescription through an executive order is valid?

(4) If so, the mode of computation, that is, 2 % of the value of the immovable property or 0.6 % of the net value of the shares transferred whichever is higher is in order ?

(5) Whether the retrospective application of the impugned Government Order with effect from 01.04.1956, by way of G.O.Ms.No.47 dated 19.02.2020 is valid ?

(6) Whether the stamp duty paid in other States, while registering the amalgamation orders are liable to be taken into account and set off as against the duty payable, while presenting the document for registration in the State of Tamil Nadu ?.

## **F. Question No.1:**

6. Section 3 of the Tamil Nadu Stamp Manual is the charging Section, which makes the 'instruments' liable to duty. Section 3 reads as under:-

**“3.Instruments chargeable with duty : - Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefor, respectively, that is to say, .....**

.....”

(emphasis

supplied)

6.1 This has been explained by the Hon'ble Supreme Court in the ***Hindustan Lever case*** (cited supra) more particularly in paragraph No.22, which reads as under:-

“22. The Court held that the thing which is made liable to stamp duty is the “instrument”. It is not a transaction of purchase and sale, which is struck at, it is the “instrument” whereby the purchase and sale are effected which is struck at. It is the “instrument” whereby any property upon the sale thereof is legally or equitably transferred and the taxation is confined only to the instrument whereby the property is transferred. If a contract of purchase or sale or a conveyance by way of purchase and sale, can be, or is, carried out without an instrument, the case would not fall within the section and no tax can be imposed. Taxation is confined to the instrument by which the property is transferred legally and equitably transferred.”

6.2 Thus, it can be seen that it is the instrument which is liable to duty. Section 2 (14) defines the term 'instrument' which is extracted as hereunder :-

“2(14) “**instrument**” includes,

(a) every document, by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded;

(b) a document, electronic or otherwise, created for a transaction in a stock exchange or depository by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded; and

(c) any other document mentioned in Schedule I, but does not include such instruments as may be specified by the Government, by notification in the Official Gazette.”

6.3 Therefore, every document which results in creation, transfer, limiting extension, extinguishment or record of any right are liable, then the same could be an instrument. The Hon'ble Supreme Court in ***Ruby Sales***

**and Services (P) Ltd., case**, (cited supra), while considering the matter as to whether a consent decree passed by the Court by which rights are created in respect of the property would be an instrument, held that the same is an instrument since the title passes through. It is relevant to extract paragraph 11 of the said Judgment, which reads as under:-

“11. There is no particular pleasure in merely going by the label but what is decisive is by the terms of the document. It is clear from the terms of the consent decree that it is also an “instrument” under which title has been passed over to the appellants/plaintiffs. It is a live document transferring the property in dispute from the defendants to the plaintiffs.”

6.4 Further, the Hon'ble Supreme Court in the **Hindustan Lever case** (cited supra) dealt with the similar definition of the term 'instrument' under the Bombay Stamp Act and held that on a consideration of Section 394 of the Companies Act, it is clear that upon such Orders of the Court, the undertaking of the transferor company stood transferred to the transferee company with all its movable, immovable and tangible assets and on presentation of certified copy of the said Order of the Court to the Registrar of Companies, the transferor of company stands amalgamated in the transferee company along with all its assets and liabilities and as such the Court Order along with the amalgamation scheme appended to it, is an instrument. It is essential to extract paragraph Nos. 14 and 15, which read as follows:-

“14. The term “instrument” has been defined in Section 2(1) of the Bombay Stamp Act, 1958 which is as under:

“2. (1) ‘instrument’ includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded, but does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt;”

15. This definition of instrument is not amended by Maharashtra Act 17 of 1993. The word “instrument” is defined to mean, every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded, but does not include bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of shares, debenture proxy and receipt. The recital in the

scheme of amalgamation as well as the order of the High Court under Section 394 of the Companies Act, declares, that, upon such order of the High Court the undertaking of the transferor company shall stand transferred to the transferee company with all its movable, immovable and tangible assets to the transferee company without any further act or deed. Sub-section (3) of Section 394 provides that the certified copy of the order of the court has to be presented before the Registrar of Companies within thirty days for registration. And in default any officer of the company, who is in default, becomes liable to be punished and fined, which may extend up to Rs 500. Section 391(3) provides that an order made by the court under sub-section (2) of Section 391 shall not have effect till a certified copy of the order has been filed with the Registrar. On presentation of the certified copy of the order, the Registrar of the Company certifies that the transferor company stands amalgamated with the transferee company along with all its assets and liabilities. Thus the amalgamation scheme sanctioned by the court would be an “instrument” within the meaning of Section 2(1). By the said “instrument” the properties are transferred from the transferor company to the transferee company, the basis of which is the compromise or arrangement arrived at between the two companies.”

6.5 Thus the Order of the Court / Tribunal along with the scheme of amalgamation appended to it would be an instrument within the meaning of Section 3 of the Act and axiomatically the contentions based on the Judgment of the learned Single Judge of this Court in the ***T.T.Krishnamachari and Co. Case*** (cited supra) cannot be countenanced. Similarly, the arguments based on the Judgment of the Hon'ble Supreme Court in ***Jupudi Kesava Rao's case*** (cited supra) is also rejected as the observations made therein are totally in a different context. The Hon'ble Supreme Court in the said case was dealing with the admissibility of oral evidence relating to an agreement which was insufficiently stamped. In the said context, when the defendant did not produce the document for the plaintiff to pay the penalty and make the document admissible, the Hon'ble Supreme Court while approving the finding of the Appellate Court that the defendants who are responsible for the

suppression of the original agreement of lease and that the reception of secondary evidence by way of an oral evidence can be resorted to and it further held that the objection under Section 35 of the Stamp Act cannot be made in respect of the secondary evidence. In the present context, whereunder the Registrar being a public officer, under Section 35 is mandated not to act upon in the scheme of amalgamation, unless it is duly stamped, the said argument of certified copy will not hold good. Therefore, we reject the submissions made on behalf of the petitioners in this regard and answer the question that the Orders of Court/Tribunal sanctioning schemes of amalgamation/restructuring/de-merger etc., along with such schemes appended thereto, shall be 'instruments' within the meaning for the purposes of the Act.

**G. Question No.2:**

7. The term 'conveyance' is defined in Section 2(10) of the Act, which reads as follows:-

“(10) **Conveyance.**- “Conveyance” includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided for by Schedule 1;”

7.1 We have already held that the Order of Court/Tribunal sanctioning an arrangement/scheme of amalgamation appended thereto is an instrument. It can be seen that such amalgamation results in transfer of both movable and immovable assets. The scheme of amalgamation results in transfer of the rights, assets and liabilities of the transferor company vesting in the transferee company *in praesenti* and therefore there is a transfer *inter vivos*. In this context, the matter is *no longer res integra* as the Hon'ble Supreme Court in the case of **Hindustan Lever case** (cited supra) more particularly in paragraph Nos.28 and 31 has held as follows:-

“**28.** The transfer of assets and liabilities takes effect by an order of the court. The order also provides for passing of consideration from the transferee company to the shareholders of the transferor company. The consideration for sale in a transaction like this is the shares. The share exchange ratio is decided on the basis of number of factors including the value of net assets of the transferor and transferee company. To arrive at this figure of net assets the liabilities have to be set off against the gross value of the assets. The share value is fixed. The

properties belong to the company and the company belongs to the shareholders. Once the shareholders of the transferee company receive the consideration it would be deemed as if the owner has received the consideration.

.....

**31.** Learned counsel for the appellants argued that *Ruby Sales and Services (P) Ltd.* [(1994) 1 SCC 531] was a case of consent decree where the term of the settlement was admittedly a conveyance, transferring property alone. That the order passed by the High Court under Section 394 of the Companies Act cannot be equated with a consent order. This submission cannot be accepted. The Court held that consent decree was an instrument. It was not held to be an instrument because it was a consent decree. It was held to be an instrument because it conveyed the title in the property in dispute from the defendant to the plaintiff. It was held to be an instrument because it had the effect of conveying the title and not because it was a consent decree. Once this definition is kept in view, it would be clear that consent or no consent when the decree or order of the court purports to transfer title in the property, it becomes an instrument. The Court negated the submission made that prior to introduction of Section 2(g)(iii) the consent decree was not included in the definition of “conveyance” and “instrument” by observing (SCC p. 535, para 15) “it appears to us that the amendment was made out of abundant caution and it does not mean that the consent decree was not otherwise covered”. It clearly shows that the Court was of the opinion that consent decree which purports to convey the title in the property was in an instrument liable for stamp duty at all times and it was only by way of abundant caution that the legislature had included the consent decree in the definition of the word “conveyance”.

7.2 It is also essential to quote paragraph Nos.12, 44 and 45 of the Judgment of the Hon'ble Supreme Court in the ***Hindustan Lever case*** (cited supra) as under:-

“12. Two broad principles underlying a scheme of amalgamation which have been brought out in this judgment are:



1. that the order passed by the court amalgamating the company is based on a compromise or arrangement arrived at between the parties; and

2. that the jurisdiction of the Company Court while sanctioning the scheme is supervisory only i.e. to observe that the procedure set out in the Act is met and complied with and that the proposed scheme of compromise or arrangement is not violative of any provision of law, unconscionable or contrary to public policy. The court is not to exercise the appellate jurisdiction and examine the commercial wisdom of the compromise or arrangement arrived at between the parties. The role of the court is that of an umpire in a game, to see that the teams play their role as per rules and do not overstep the limits. Subject to that how best the game is to be played is left to the players and not to the umpire.

Both these principles indicate that there is no adjudication by the court on the merits as such.

.....

44. Under the Bombay Stamp Act conveyance includes any instrument by which property, whether movable or immovable, or any estate or interest in any property is transferred to, or vested in, any other person, *inter vivos*. The words “inter vivos” have not been defined in the Act or in the General Clauses Act. The meaning assigned to the words “inter vivos” in the *Black’s Law Dictionary*, 6th Edn., is:

“Between the living; from one living person to another. Where property passes by conveyance, the transaction is said to be *inter vivos*, to distinguish it from a case of succession or devise. So an ordinary gift from one person to another is called a ‘gift *inter vivos*’....”

45. It was contended that since the transaction was not between “living beings” the same was not “inter vivos” as the transfer of property had not taken place between living beings. We do not agree. “Transfer of property” has been defined in Section 5 of the Transfer of Property Act, 1882 to mean an act

by which a living person conveys property, in present or in future to one or more other living persons. Company or association or body of individuals, whether incorporated or not, have been included amongst “living person” in this section. It clearly brings out that a company can effect transfer of property. The words “inter vivos” in the context of Section 394 of the Companies Act would include within their meaning also a transfer between two “juristic persons” or a transfer to which a “juristic person” is one of the parties. The transaction between a minor or a person of unsound mind with the other person would not be recognised in law, though the same is between two living beings, as they are not juristic persons in the eye of the law who can by mutual consent enter in a contract or transfer the property. The company would be a juristic person created artificially in the eye of the law capable of owning and transferring the property. Method of transfer is provided in law. One of the methods prescribed is dissolution of the transferor company by merger in the transferee company along with all its assets and liabilities. Where any property passes by conveyance, the transaction would be said to be inter vivos as distinguished from a case of succession or devise.”

7.3 Thus, the Hon'ble Supreme Court, while considering the very question has authoritatively decided the issue that it would be a transfer *inter vivos* of movable and immovable properties and therefore even in the absence of a specific amendment it would be covered within the definition of ‘conveyance’.

As a matter of fact, it can be seen that the definition of ‘conveyance’ is an inclusive definition. The Hon'ble Supreme Court in ***Karnataka Power Transmission Corporation and Anr. Vs. Ashok Iron Works Pvt. Ltd.***, has held that the inclusive definition in any legislation should be considered as under:-

“.....(one) to enlarge the meaning of words or phrases so as to take in the ordinary popular and natural sense of the words and also the sense which the statute wishes to attribute to it; (two) to include meaning about which there might be some dispute; (three) to bring under one nomenclature all transactions

possessing certain similar features but going under different names.”

7.4 Thus it can be seen that amalgamation, merger or other such arrangements shall be within the meaning of ‘conveyance’ in more than one sense. As a matter of fact, such schemes, originally being dealt with under Sections 391-394 of the Companies Act, 1953 and now under Chapter XV (Sections 230-240) of the Companies Act, 2013. Except doing away with the definition of ‘transferor company’ and ‘transferee company’ in respect of amalgamation and imposing certain additional requirements of disclosure etc., the essential features of the transactions remains the same. Therefore, we hold that the order sanctioning amalgamation / restructuring appended by the scheme as such is an instrument of conveyance liable to duty under Article -23 of the Act and no further legislative action is necessary to bring the same within the ambit of duty.

7.5 As far as the impugned circular dated 20.11.2018 is concerned, it only attempts to clarify the existing position by quoting the relevant Judgments and addressing the registering officers that they should be aware that the scheme of amalgamation submitted by the Companies and sanctioned by the High Court are classifiable as ‘Conveyance’ and will be subject to duty under Article -23 of Schedule -I of the Act. The operative portion of the said circular was extracted above. Therefore, in view of our findings regarding Question No.1 and 2, we do not find any illegality in the said Circular dated 20.11.2018.

### **H. Question No.3**

8. We have held that the order of sanction of amalgamation / restructuring is an ‘instrument’ of ‘conveyance’ and is liable to duty and is chargeable as per Article -23 of Schedule -I of the Act. Once it is chargeable at the rate of 5 % of the market value of the immovable property, then the state is enabled under Section 9 (1) of the Act which is extracted hereunder:-

“9. Power to reduce, remit or compound duties - Gazette,  
[(1)] [The Government] may, by rule, or order published in the  
Official Gazette,

(a) reduce or remit, whether prospectively or retrospectively,  
in the whole or any part of [the territories under its  
administration], the duties with which any instruments or any

particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, by or in favour of any members of such class, are chargeable, and

(b) provide for the composition or consolidation of duties [of policies of insurance and] in the case of issues by any incorporated company or other body corporate [or of transfers (where there is a single transferee, whether incorporated or not)] of debentures, bonds or other marketable securities.”

8.1 As far as the notification in G.O.Ms.No.29 dated 01.03.2019, it states that it is to reduce the duty chargeable under the Act. Therefore, the State of Tamil Nadu is well within its powers to reduce or remit the duty chargeable under the Act. So long as the power is exercised to reduce the duty chargeable under the Act, the same would be perfectly in order. When it is only a question of reduction or remitting, it can be by an Order passed in exercise of power under Section 9(1)(a) of the Act and accordingly we answer the question.

#### **I. Question No. 4 :**

9. The impugned notification is extracted in para 2.3 above. While exercising the powers under Section 9(1)(a), reducing the duty from 5 % to 2 % of the market value of the property is a clear and fair exercise of power and it merely reduces the duty chargeable as per Article- 23. As far as the second limb of the notification, to compute the Stamp Duty on 0.6 % of the aggregate of the market value of the shares and then adopt the value whichever is higher is concerned, firstly it introduces a new mode of computation, which is not found in Article -23. Therefore, the same tantamounts to amending Article - 23, which would require legislative action. Secondly, it was pointed out across the bar that there are several instances where the aggregate market value of the shares in respect of the transferee company which is amalgamated may run to several crores, whereas it may have an immovable property of a meagre value within the State of Tamil Nadu in which case, as per the notification if 0.6% of the aggregate market value of the shares which is higher would only be taken, then the same would result in increase in duty which would be more than 5 % of the duty chargeable under Article- 23. Though on

a consideration of the Judgment in *Li Taka Pharmaceuticals Ltd., case* (cited supra) and *Delhi Towers Ltd., case* (cited supra) it can be concluded that charging the instrument of amalgamation on the basis of the aggregate market value of shares would be an appropriate mode, in the absence of legislative act of amending Article- 23, in the exercise of power or reduction under Section 9 (1)(a) of the Act, such a mode cannot be introduced. To that extent alone, impugned Government Order is without jurisdiction and is a colourable exercise of power.

9.1 Therefore, to the last sentence of the notification contained in the impugned Government Order, in G.O.(Ms.) No.29 dated 01.03.2019, i.e., “*or 0.6 percent of the aggregate of the market value of the shares, whichever is higher*” alone is struck down and rest of the notification shall stand. Accordingly we answer the question No. 4.

**J. Question No.5:**

10. Firstly we have held that the instrument of amalgamation is already liable to duty under the existing provisions and the impugned circular is only clarificatory in nature. Therefore any clarification would automatically be retrospective. As far as the impugned Government Order in G.O.(Ms.) No.47 dated 19.02.2020 is concerned, *inter alia*, it specifies that the applicability of G.O.(Ms.) No.29 dated 01.03.2019 shall be retrospective. Conveyance it was chargeable at various rates periodically prescribed and is presently at the rate of 5 % . It can be seen that from 01.04.1956 at no point of time, it was less than 2% and the G.O.(Ms.) No.29 dated 01.03.2019 only reduces the duty to 2 % . Therefore the petitioners have no ground to complain of G.O.(Ms.) No.47 dated 19.02.2020, which only makes the application of the beneficial provision of G.O.(Ms.) No.29 dated 01.03.2019 as retrospective. As a matter of fact, Section 9(1) (a) of the Act itself expressly authorises the State to exercise such a power retrospectively. Thus, the retrospective applicability *per se* cannot be termed as illegal.

10.1. The further apprehension of the petitioners that the present market value would be imposed is totally unfounded as clause 3 (b) of the Government Order itself categorically makes it clear that it would be as per the value mentioned in the amalgamation scheme or as per the guideline value prevailing as on the date of the scheme.

10.2. Therefore, we uphold the G.O.(Ms.) No.47 dated 19.02.2020. We hasten to add that it is yet another question that at what point of time, the

State can insist for duty and whether it can be insisted at the time of presentation of any subsequent document in respect of any property which is conveyed to third parties and whether such documents can be withheld as a Charge for payment of duty on amalgamation are all altogether different questions which do not fall for consideration in the present petitions and as such are not considered or answered. We accordingly answer the question No.4 that the retrospective reduction of duty is valid.

**K.Question No.6:**

11. It can be seen that while some States like the State of Tamil Nadu are treating the orders of Court ordering amalgamation along with the schemes appended thereto as conveyance *per se*, in some States like, Maharashtra amendments have been made in respect of the definition of 'conveyance' and the instruments effecting amalgamation are specifically charged on the market value of the shares.

11.1. We have already held that the stamp duty under the Act is chargeable on the instrument. Once the instrument is already presented for registration in other States and again presented for registration within the State of Tamil Nadu, then, Section 19 -A of the Act, which is a Tamil Nadu amendment of the Indian Stamp Act, 1899, which will come into play. For ready reference, Section 19 -A is extracted hereunder:-

**“19-A. Payment of duty on certain instruments liable to increased duty under section 3.-** Where any instrument has become chargeable in any part of India other than the State of Tamil Nadu with duty under the stamp law in force in that part and thereafter becomes chargeable with a higher rate of duty in the said State under section 3-

(i) notwithstanding anything contained in section 3, the amount of duty chargeable on such instrument shall be the amount chargeable on it under Schedule I less the amount of duty, if any, already paid on it in that part;

(ii) in addition to the stamps, if any, already affixed thereto, such instrument shall be stamped with the stamps necessary for the payment of the amount of duty chargeable on it under clause (i) in the same manner and at the same time and by the same persons as though such instrument was an

instrument received in India for the first time at the time when it became chargeable with the higher duty; and

(iii) the provisions contained in clause (b) or clause (c) as the case may be, of the proviso to sub-section (3) of section 32, shall, with the necessary modifications, apply to such instrument, but the provisions contained in clause (a) of the said proviso shall not apply thereto.”

11.2. The very question was dealt with in detail by the Constitution Bench of the Hon'ble Supreme Court in ***New Central Jute Mills Co. Ltd. And Ors Vs. State of West Bengal and Ors.***, while considering the identical provision 19 -A of the Uttar Pradesh amendment. The Hon'ble Supreme Court has held that though the execution of instrument may be in other States, when the instrument relates to any property situate within the State, then the liability also arises with reference to the State, where the property is situate also. It is essential to extract paragraph 14 of the Judgment, which reads as follows:-

“14. Primarily, the liability of an instrument to stamp duty arises on execution. Execution in India itself made the instrument liable to stamp duty under Section 3(a) as it stood before the amendment. Under Section 3(c) execution out of India, where the instrument relates to property situated or any matter or thing done or to be done in India together with the further fact that the instrument is received in India, made the instrument chargeable with duty. In amending the Stamp Act what the State legislatures substantially did was to treat the particular State as equivalent to India. Thus, after the amendment by the U.P. legislature the position in law is that execution of an instrument in Uttar Pradesh is made the primary dutiable event and liability to stamp duty arises on such execution. Apart from that, liability also arises where the instrument though executed out of Uttar Pradesh relates to property situated or any matter or thing done or to be done in Uttar Pradesh and is received in Uttar Pradesh. It may be mentioned that the changes in the law made by the other State legislatures are exactly similar.”

11.3. Thereafter, considering the question in detail, the Hon'ble Supreme

Court has ultimately held as follows in paragraph Nos.19 and 20 :-

“19. Section 19-A in terms applies only to an instrument which after becoming chargeable in any State outside Uttar Pradesh becomes chargeable in Uttar Pradesh with a higher rate of duty. It seems to us, however, that where the rate of duty in Uttar Pradesh is the same or even lower, no further duty is payable on such an instrument. For, it would be anomalous and unreasonable to hold that the legislature intended that though where a higher rate is payable in Uttar Pradesh the excess need only be paid, the Uttar Pradesh rate should be paid in full where what has already been paid is the same or higher.

20. The result of this will be that if an instrument after becoming liable to duty in one State on execution there becomes liable to duty also in another State on receipt there, it must first be stamped in accordance with the law of the first State and it will not require to be further stamped in accordance with the law of the second State when the rate of that second State is the same or lower; and where the rate of the second State is higher, it will require to be stamped only with the excess amount and that in accordance with the law and the rules in force in the second State.”

(emphasis supplied)

11.4. Thus, it is clear that upon presentation in the State of Tamil Nadu, the duty has to be calculated as per the rate payable in Tamil Nadu and thereafter, upon comparison, if the duty paid in any other State is higher than the State of Tamil Nadu, then the same has to be taken into consideration and no duty shall be payable. If the duty paid is lesser than what is payable in the State of Tamil Nadu, then whatever amount paid is to be set off and the balance duty is to be paid on the instrument of amalgamation. Accordingly, we answer this question.

#### **L. The Result:**

12. In the result, the Writ Appeal Nos.758, 687, 751, 755 & 851 of 2022, Writ Petition (MD) No.1824 of 2019 and Writ Petition Nos.31650 & 31651 of



2016, 8511 and 31191 of 2019, 18188 of 2020, 21977, 21979 & 22562 of 2021 and 30363 of 2023 are disposed of, on the following terms;

- (i) the Circular No.49282/P1/2018 dated 20.11.2018 is upheld;
- (ii) the G.O.(Ms.) No.29 dated 01.03.2019 is quashed in as much as portion of the notification “*or 0.6 percent of the aggregate of the market value of the shares, whichever is higher*” and in all other aspects the said G.O. (Ms.) No.29, dated 01/03/2019 shall be valid;
- (iii) the G.O.(Ms.) No.47 dated 19.02.2020 is held valid;
- (iv) Accordingly, the authorities will be entitled to collect the stamp duty by calculating 2% of the market value of the immoveable property and excess duty if any collected shall stand refunded to the writ petitioners;
- (v) The Stamp Duty if any paid, while presenting the order / scheme relating to amalgamation in other States shall be taken into account, while calculating the Stamp Duty payable in the State of Tamil Nadu and after setting off the amount already paid, only the balance amount if any alone can be demanded;
- (vi) in Writ Petition No.31191 of 2019, pursuant to the interim orders of this Court, the petitioner has deposited a total sum of Rs.4,56,55,000/-. Already, by order, dated 16.11.2023, the petitioner was permitted to withdraw the sum of Rs.3,25,47,198/-. As contained in Clauses – (iv) and (v) of the judgment above, the respondent shall proceed to determine the 2% of market value of the immovable property and after giving credit to the amount paid by the petitioner, while registering the scheme in the State of Maharashtra, the balance, if any shall be paid back to the petitioner within a period of 12 weeks from the date of receipt of a copy of this judgment;
- (vii) No costs. Consequently connected miscellaneous petitions are closed.