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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment pronounced on: 28.10.2025**

+ **W.P.(C) 1463/2021**

MR. GURDEV RAJ KUMAR

.....Petitioner

Through: Mr. Amish Tandon, Ms. Charchika
Yadav, Advocates.

versus

COLLECTOR OF STAMPS (GOVERNMENT OF NCT OF DELHI)

.....Respondent

Through: Mr. Lalitaksh Joshi, Ms. Ananya
Sanjiv Saraogi, Advocates.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition has been filed by the petitioner seeking quashing of the order dated 19.10.2020, bearing No. COS/VasantVihar/2020/1068 passed by the respondent / Collector of Stamps, GNCTD, whereby, the petitioner was directed to pay the allegedly deficient stamp duty of Rs. 51,740/- along with penalty of Rs. 2,06,960/- . The petitioner further seeks a direction for refund of the additional stamp duty amounting to Rs. 2,58,700/-.

2. The factual matrix, as set forth by the petitioner is that he entered into a lease deed dated 01.07.2020 with Optimum Therapeutics Private Limited, in respect of property bearing No. F-63, Poorvi Marg, Vasant Vihar, New Delhi. Clause 6 of the said lease deed unequivocally stipulates that the property shall be used solely for residential purposes.



3. On presentation of the lease deed for registration before the Sub-Registrar VII-A, it was impounded under Section 33 of the Indian Stamp Act, 1899 on the alleged ground of deficient stamp duty, due to the purported applicability of GST, and inclusion thereof for the purpose/s of stamp duty computation.
4. Consequently, the matter was referred to the office of the respondent/ Collector of Stamps for adjudication and a show cause notice dated 20.07.2020 was issued to the petitioner. In response thereto, the petitioner submitted detailed representations, asserting that:
 - i. Leases of residential property for residential purposes are exempt from GST under Entry No. 12 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, issued by the Department of Revenue, Ministry of Finance, Government of India.
 - ii. Even assuming applicability of GST, its component does not form part of lease rent for stamp duty purposes per Circular No. 3759/01/2015-2 dated 24.05.2019 issued by the Inspector General of Registration, Chennai.
5. The grievance of the petitioner is that the respondent/ Collector of Stamps rejected the petitioner's representations and by way of the impugned order dated 19.10.2020, directed payment of deficit stamp duty and penalty, aggregating to Rs. 2,58,700/-.
6. Learned counsel for the petitioner submits that, without prejudice to his rights, the said amount was deposited by the petitioner to facilitate registration, which took place on 19.11.2020.
7. Entry No. 12 of Notification No. 12/2017-Central Tax (Rate), issued



by the Department of Revenue, Ministry of Finance, Government of India is reproduced as under:

S. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (Percent)	Condition
12	Chapter 9963 or Heading 9972	Services by way of renting of residential dwelling for use as residence	Nil	Nil

8. Attention is also drawn to the Circular dated 02.05.2018, bearing No. 44/18/2018-CGST issued by the Tax Research Unit, Department of Revenue, Ministry of Finance, Government of India. The relevant extract of the said circular reads as under :

“5. To sum up, the activity of transfer of 'tenancy rights' is squarely covered under the scope of supply and taxable per-se. Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable. However, renting of residential dwelling for use as a residence is exempt [Sl. No. 12 of notification No. 12/2017-Central Tax(Rate)]. Hence, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt. As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.”

9. Further, learned counsel for the petitioner places reliance on Circular No. 3759/01/2015-2, issued by the Inspector General of Registration, Chennai 600028. The same reads as under:

“Letter No.3759/J1/2015-2 Dated: 24/05/2019



Sir/Madam,

Sub: Stamp Duty- Levy of stamp duty on lease deeds-Executed by SIPCOT – Exclusion of water charges for the purpose of computing lease amount-clarification-reg.

Ref: 1. Advocate General of Tamil Nadu, Opinion No.54/AGVN/2019 dated 04.04.2019

2. The Principal Secretary to Government, Commercial Taxes and Registration Dept., Letter No.2237/J1/2019-2 dated: 09.04.2019.

It has been brought to the notice that based on the audit objection raised by the Accountant General regarding short levy of stamp duty on the lease deed executed by SIPCOT due to omission to include the water charges for calculating lease amount on which stamp duty has to be levied, the Registering officers insisted to pay the stamp duty for the supply of water in respect of lease deeds.

At this juncture, it is pertinent to refer sub section 16 of section 2 of the Indian Stamp Act, 1899 which provides definition for lease and the same is indicated as under:-

“....Lease” means a lease of immovable property and includes also –

- (a) a patta,
- (b) a kabuliyat or other undertaking in writing, not being a counter part of lease...”

Section 105 of the Transfer of Property Act, 1882 also provides definition for lease. It says that “A lease of immovable property is a transfer of a right to enjoy such property made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.”

A bare reading of the above definitions would clearly indicate that the lease only pertains to immovable property.

Therefore, in view of the audit objection raised by the Accountant General, the question that arises for our consideration is whether the water is an immovable property and if so, the cost of supply of water has to be included into the lease amount for the purpose of levy of stamp duty.

With regard to above question, it is stated that in the case of Chief Controlling Revenue Authority Vs Anti Biotic Project Virbadhar reported in AIR 1979 AII 355, it was held as under:-

“It could be seen that water is neither land nor a tonement. Accordingly, water could be considered only as movable property. As the instrument does not create any right over any immovable property,



the same could not be considered as a lease”.

In view of the aforesaid dictum, it is clear that water is not an immovable property. Hence, the objection raised by the Accountant General in having treated the water as immovable property and hence the cost of supply of water (Both capital and running cost) has to be included in the lease amount for the purpose of levy of stamp duty is not legally sustainable.

Moreover, after the implementation of Goods and Services Tax (GST) by the Central Government on 01.07.2017 in question has been raised as to whether the GST payable by the lessee should be chargeable for stamp duty or not. The opinion of the Advocate General of Tamil Nadu was sought for on the point whether the GST payable by the lessee should be treated as part of rent as per the explanation provided under Article 35 of Schedule I to the Indian Stamp Act, 1899.

The Advocate General of Tamil Nadu in his opinion has stated that from the reading of the Explanation provided under Article 35 of the Schedule I to the Indian Stamp Act, 1899, it is clear that when the lessee undertakes to pay any recurring charges such as Government revenue, the landlord's share of cess and municipal tax, such amount shall be deemed to be a part of the rent and that GST on rent amount is obviously not a recurring charge on the property and that the explanation makes it clear that the charges contemplated are in nature of municipal rates or taxes or any other levy on the property itself and not on the lease rent and hence GST cannot be included as part of the rent for the purpose of chargeability of Stamp Duty. He has therefore opined that the GST payable by the lessee cannot be treated as part of the rent for the purpose of chargeability of Stamp Duty under the Indian Stamp Act, 1899.

It is therefore instructed that in respect of lease deeds and modified lease deeds executed by the SIPCOT, the Registering Officers should not treat the water as an immovable property for the purpose of levy of stamp duty and also the GST payable by the lessee cannot be treated as part of the rent for the purpose of chargeability of stamp duty and the deed has to be classified under Section 6 and Article 35 of Indian Stamp Act, 1899.

Further it is instructed that since the remark is contested by the Department, further documents with respect to the properties of already registered lease deeds by SIPCOT should be accepted without insisting payment of stamp duty pointed out by Accountant General.”

10. Upon perusal of the relevant notifications and circulars, this Court finds merit in the petitioner's submissions. Entry No. 12 of the Central Tax Notification No. 12/2017 leaves no manner of doubt that renting/leasing of a



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residential dwelling for use as residence, is exempt from GST. As such, the view adopted by the respondent as regards deficit payment of stamp duty, is misconceived.

11. In view of the above, the impugned order dated 19.10.2020 is hereby quashed.

12. The respondent is directed to refund the amount of Rs.2,58,700/- (including deficit stamp duty and penalty), deposited by the petitioner, within a period of six weeks.

13. The petition is disposed of in the above terms.

SACHIN DATTA, J

OCTOBER 28, 2025/ss