



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.8750 OF 2024**

Armstrong Machine Builders Private Limited .. Petitioner

**Versus**

State of Maharashtra through the Secretary  
Ministry of Revenue and Anr. .. Respondents

- .....
- Mr. Mutahhar Khan a/w Ms. Kavisha Shah, Advocates i/by India Law Alliance for Petitioner.
  - Mr. Jay Sanklecha, 'B' Panel Advocate alongwith Ms. M.S. Srivastava, AGP for Respondents.
- .....

**CORAM : MILIND N. JADHAV, J.**

**Reserved on : August 19, 2025**

**Pronounced on : September 3, 2025**

**JUDGMENT:**

**1.** Heard Mr. Khan, learned Advocate for Petitioner and Mr. Sanklecha, learned 'B' Panel Counsel a/w Ms. Srivastava learned AGP for Respondents.

**2.** Writ Petition impugns order dated 09.10.2023 passed by Office of Inspector General of Registration and Controller of Stamps, Pune. Application filed by Petitioner under Section 47(c)(1) of the Maharashtra Stamp Act, 1958 (for short '**the said Act**') for refund of Stamp Duty is rejected solely on the ground of limitation. Impugned order is appended at page No.23 of the Petition.

**3.** Briefly stated, on 13.07.2021, Petitioner entered into a Share Purchase Agreement (for short 'SPA') with one M/s. Dematic Holdings

UK Limited and others for transfer of equity shares for a total consideration of Rs. 585,37,92,000/-. In compliance with requirement under Article 5(h-A)(iv) of said Act, Petitioner paid Stamp Duty of Rs.1,17,08,200/- through purchase of e-Stamp paper (e-SBTR Challan) bearing GRN No.MH003566080202122S to facilitate execution of SPA.

**3.1.** On 17.04.2020 Ministry of Commerce and Industry, through Department for Promotion of Industry and Internal Trade (FDI Policy Section) issued a Press Note No.3 (2020 series) mandating that a non-resident entity of a country sharing land border with India or where beneficial owner of investment in India is situated in or is a citizen of such a country, he could invest in India only under the Government Route which required prior Government approval.

**3.2.** Since the ultimate beneficial owner of M/s. Dematic Holdings UK fell within the ambit of Press Note No.3, said Purchaser - M/s. Dematic Holdings UK Limited applied for approval to Ministry of Commerce and Industry under the Foreign Investment Facilitation mechanism by filing Application No.5825 for acquisition of shares of Petitioner Company under the SPA.

**3.3.** By letter dated 24.03.2022, Ministry of Commerce and Industry rejected the Application thereby rendering the SPA *void-ab-initio* and unenforceable.

**3.4.** Hence on 22.09.2022 Petitioner filed Application for refund of Stamp Duty paid on the SPA. Application came to be rejected by Respondent No.2 - Inspector General of Registration and Controller of Stamps, solely on the ground of limitation. Rejection order dated 28.11.2022 was communicated to the Office of the Deputy Inspector General, Nashik Division.

**3.5.** On 19.01.2023, Deputy Inspector General, Nashik Division, upon completion of enquiry, forwarded recommendation to Respondent No.2 to disallow refund claim of Petitioner under Section 52 of the said Act. Pursuant thereto, on 12.09.2023, Petitioner was afforded an opportunity of personal hearing.

**3.6.** Thereafter by the impugned order dated 09.10.2023, Respondent No.2 - Inspector General of Registration and Controller of Stamps, rejected Petitioner's Application for refund of Stamp Duty.

**3.7.** Hence the present Writ Petition.

**4.** Mr. Khan, learned Advocate appearing for Petitioner would draw my attention to the impugned order passed by Respondent No.2 and would submit that it is passed without following the principles of natural justice and is hypertechnical, unjust and illegal. He would submit that Application for refund is solely rejected on the ground of delay in filing the Application. He would submit that Respondent No.2 failed to consider that the application for approval submitted by M/s.

Dematic Holdings UK Limited as per Press Note No. 3 was rejected on 24.03.2022 i.e. 8 months after payment of Stamp Duty which rendered the SPA void only thereupon on rejection of the Application, hence until that date, Petitioner had no cause of action to seek refund.

**4.1.** He would submit that Petitioner did not avail any benefit under the SPA as it did not fructify. He would submit that Respondent No.2 failed to consider that e-Stamp paper used for SPA was found to be unfit due to Government rejection. Hence according to him limitation period for refund of stamp duty ought to have been considered from date of SPA becoming void or unenforceable i.e. on 24.03.2022 and not from the date of purchase of stamp.

**4.2.** He would submit that denial of refund of Stamp Duty would amount to unjust enrichment by the State as State cannot retain Stamp Duty when the underlying transaction failed to fructify and became *void-ab-initio*.

**4.3.** He would submit that delay was occasioned solely due to delay in Governmental process which is entirely beyond the control of Petitioner. He would submit that though Petitioner could not apply for refund within the prescribed period of six (6) months solely due to rejection of the mandatory Government approval, however later in point of time i.e. after 8 months of payment of Stamp Duty, this ground of delay cannot defeat the legitimate claim of refund of

Petitioner.

**4.4.** In support of his submissions he has referred to and relied upon the following decisions of the Supreme Court and this Court as under:

- (i) *Committee – GFIL Vs. Libra Buildtech Private Ltd and Ors.*<sup>1</sup>,
- (ii) *Rajeev Nohwar Vs. Chief Controlling Revenue Authority, Maharashtra State, Pune and Ors.*<sup>2</sup> ;
- (iii) *Satish Buba Shetty Vs. Inspector General of Registration and Collector of Stamps and Ors.*<sup>3</sup>;
- (iv) *Kasthmandup Developer Pvt. Ltd. Vs. State of Maharashtra*<sup>4</sup>;
- (v) *Bano Saiyed Parwaz Vs. Chief Controlling Revenue Authority And Ors.*<sup>5</sup> ;
- (vi) *Nanji Dana Patel Vs. State of Maharashtra and Ors.*<sup>6</sup>;
- (vii) *Panoli Intermediate (India) Pvt. Ltd. Vs. Union of India and Ors.*<sup>7</sup> ;
- (viii) *Pruthvirajsingh Nodhubha Jadeja Vs. Jayeshkumar Chhakaddas Shah and Ors.*<sup>8</sup> ;
- (ix) *Vilas Eknath Nangude Vs. State of Maharashtra*<sup>9</sup> ; and
- (x) *Harshit Harish Jain and Anr. Vs. State of Maharashtra and Ors.*<sup>10</sup>.

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1 (2015) 16 SCC 31  
 2 (2021) 13 SCC 754  
 3 Writ Petition No.9657 of 2022, decided on 11.01.2024.  
 4 (2023) SCC OnLine Bom 1143  
 5 (2024) SCC OnLine SC 979  
 6 (2024) SCC OnLine Bom 2817  
 7 (2015) SCC OnLine Guj 570  
 8 (2019) 9 SCC 533  
 9 (2023) SCC OnLine Bom 2051  
 10 (2025) SCC OnLine SC 166

**4.5.** He would submit that impugned order suffers from procedural irregularity, violation of principles of natural justice and complete non-application of mind thereby rendering it legally unsustainable. He would persuade the Court to quash and set aside the impugned order and allow the Petition.

**5.** *PER CONTRA*, Mr. Sanklecha learned 'B' Panel Counsel appearing alongwith Ms. Srivastava, learned AGP for Respondent - State would support the impugned order and submit that it is passed by following the due process of law and is sustainable.

**5.1.** He would submit that Refund Application was filed after a delay of 1 year 2 months and 9 days from the date of purchase of stamp. He would submit that it is pertinent to note that Section 48 of the said Act has a mandatory limitation period of six (6) months for filing of Application for refund. Thus, the Application for refund was hopelessly barred by limitation.

**5.2.** He would submit that though it is settled law that right to refund is a statutory right however it can be allowed only subject to certain restrictions. He would argue that it is not open for Petitioner to rely only on its statutory right and ignore restrictions subject to which such right is made enforceable. In support of this submission he has referred to and relied upon the decisions of the Supreme Court in the

case of *Burmah Constructions Company Vs. State of Orrisa and Ors.*<sup>11</sup> ; *Union of India Vs. VKC Footsteps (India)(P) Ltd.*<sup>12</sup>; and *Rajeev Nohwar (2<sup>nd</sup> supra)*.

**5.3.** He would submit that applicability of Section 47 has to be made alongwith and in compliance with Section 48 of the said Act. He would submit that Section 47 of the said Act adverts to “impressed stamps spoiled in the cases”. He would submit that Sub-section 1 of Section 47(c) is concerned with an instrument which is “afterwards found to be absolutely void in law from the beginning” which is the ground taken in the present case by Petitioner. He would submit that in the facts of the present case, the SPA did not render itself absolutely void since the beginning but only upon refusal of permission by the Ministry of Commerce and Industry (Government Authority) and hence Section 47(1)(c) would not be applicable to the Petitioner's case. He would submit that even if it is assumed to be applicable it clearly states that Application will have to be within the period prescribed under Section 48 which provides for limitation of six (6) months from the date of purchase of Stamp which is not adhered to in the present case by Petitioner.

**5.4.** In support of his submissions he has referred to and relied upon the following decisions of the Supreme Court and other High

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<sup>11</sup> 1961 SCC OnLine SC 26

<sup>12</sup> (2022) 2 SCC 603

Courts as under:-

- (i) *District Registrar and Collector, Hyderabad and Anr. Vs. Canara Bank and Ors.*<sup>13</sup> ;
- (ii) *State of Madhya Pradesh Vs. Rakesh Kolhi and Anr.*<sup>14</sup>;
- (iii) *S.N. Mathur Vs. Board of Revenue and Ors.*<sup>15</sup>;
- (iv) *Hindustan Lever and Anr. Vs. State of Maharashtra and Anr.*<sup>16</sup>;
- (v) *Sakuru Vs. Tanaji*<sup>17</sup>;
- (vi) *L.S. Synthetics Ltd. Vs. Fairgrowth Financial Services Ltd. and Anr.*<sup>18</sup> ;
- (vii) *M.P. Steel Corporation Vs. Comissioner of Central Excise.*<sup>19</sup> ;
- (viii) *Jayminbhai Navinbhai Doshi and Ors. Vs. State of Gujarat and Ors.*<sup>20</sup> ;
- (ix) *Parsvnath Developers Ltd. Through its Vice President, New Delhi Vs. State of U.P. Through the Secretary (Finance) Lucknow and Ors.*<sup>21</sup> ;
- (x) *Nanji Dana Patel Vs. State of Maharashtra and Ors.*<sup>22</sup> ;
- (xi) *Chandra Singh Vs. State of Rajasthan*<sup>23</sup> ; and
- (xii) *A.M. Allisom Vs. B.L. Sen.*<sup>24</sup>

**5.5.** He would submit that it is an admitted position that Refund Application was made six (6) months after the date of purchase of

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13 (2005) 1 SCC 312

14 (2012) 6 SCC 312

15 (2009) 13 SCC 301

16 (2004) 9 SCC 438

17 (1985) 3 SCC 590

18 (2004) 11 SCC 456

19 (2015) 7 SCC 58

20 2014 SCC OnLine Guj 8961

21 2018 SCC OnLine ALL 6447

22 Civil Writ Petition No.1897 of 2019; decided on 27.08.2024.

23 (2003) 6 SCC 545

24 1956 SCC OnLine SC 112

Stamps by Petitioner. He would submit that Respondent No.2 has passed correct order in accordance with law and would urge the Court to dismiss the Writ Petition.

**6.** I have heard Mr. Khan, learned Advocate for Petitioner and Mr. Sanklecha, learned Counsel / Advocate alongwith Ms. Srivastava learned AGP for Respondents and perused the record of the case with their able assistance. Submissions made by learned Advocates at the bar have received due consideration of the Court.

**7.** At the outset, it is seen that in July 2021 Petitioner paid stamp duty amount of Rs.1,17,08,200/- to facilitate transaction pertaining to the SPA. Admittedly the said transaction did not fructify due to rejection of Government approval mandated under Press Note No.3 dated 17.04.2020 issued by the Ministry of Commerce and Industry, through the Department for Promotion of Industry and Internal Trade (FDI Policy Section) on 24.03.2022. Pursuant thereto Petitioner filed Application for refund of Stamp Duty on 22.09.2022 which is appended at page No.163 of the Petition. It is seen that Respondent No.2 rejected this Application solely on ground of delay citing delay of 1 year 2 months and 9 days from the date of purchase of stamp.

**8.** It is seen that Ministry of Commerce and Industry, through the Department for Promotion of Industry and Internal Trade rejected

the mandatory prior Government Approval on 24.03.2022 which was 8 months after payment of Stamp Duty by Petitioner. This rejection led to the SPA becoming unenforceable. The underlying transaction between parties did not go through and fructify. Hence the Refund Application could not have been filed within limitation of six (6) months as prescribed under Section 48(3) of the said Act and held by the Authority because until such rejection the SPA was withheld. It was only upon rejection that the SPA became infructuous and this delay was beyond the control of Petitioner. However, that would *prima facie* not entitle Respondent - State to retain the stamp duty amount admittedly refundable to the Petitioner.

**9.** Supreme Court in the in case *Mool Chandra vs. Union of India & Anr.*<sup>25</sup> observed that it is not the length of delay that would be required to be considered while examining the plea for condonation of delay, it is the cause for delay which has been propounded which will have to be examined. If the cause for delay would fall within the four corners of “sufficient cause”, irrespective of the length of delay, then the same deserves to be condoned.

**10.** Supreme Court in the case of *Bano Saiyed Parwad* (5<sup>th</sup> *supra*) has held that when State deals with a citizen it should not ordinarily rely on technicalities and if the State is satisfied that the case of citizen is a just one, even though legal defences may be open to it, it

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<sup>25</sup> 2024 SCC OnLine SC 1878

must act, as an honest person. Furthermore, it held that that period of limitation prescribed under any law should not come in the way because it may bar the remedy, but not the right.

**11.** It is therefore necessary to examine the scope of Sections 47 and 48 of the said Act which are pivotal for determination of Petitioner's claim and so relied upon by the Competent Authority. They read thus:-

*“47. Subject to such rules as may be made by the State Government as to the evidence to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in section 48, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely:*

*(a) the stamp on any paper inadvertently and undersignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person;*

*(b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto;*

*(c) the stamp used for an instrument executed by any party thereto which—*

*(1) has been afterwards found 1[by the party] to be absolutely void in law from the beginning ;*

*2[(1A) has been afterwards found by the Court, to be absolutely void from the beginning under section 31 of the Specific Relief Act, 1963 ;]*

*(2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended ;*

*(3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed ;*

*(4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended ;*

*(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose ;*

*(6) becomes useless in consequence of the transaction intended to be thereby effected by some other instrument between the same parties and bearing a stamp of not less value ;*

*(7) is deficient in value and the transaction intended to be thereby effected had been effected by some other instrument between the same parties and bearing a stamp of not less value ;*

*(8) is inadvertently and undersignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped :*

*Provided that, in the case of an executed instrument, [except that falling under sub-clause (1A)], no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up [to be cancelled or has been already given up to the Court to be cancelled.]*

*Explanation.—The certificate of the Collector under section 32 that the full duty with which an instrument is chargeable has been paid is an impressed stamp within the meaning of this section.*

**12.** Clause (c) of Section 47 applies only in cases where the stamp has been used for an instrument executed by a party thereto. Which is why for instance sub clause (2) refers to the instrument being subsequently found unfit either by reason of an error or mistake for the purpose for which it was originally intended. Sub clause (4) adverts to a situation where the instrument has not been executed by a material party and by his inability or refusal to sign it renders the instrument incomplete and insufficient for the purpose for which it was intended. Clause (c) of Section 47 has no application to the facts of the present case since it is common ground that the stamp was not used for an instrument by any party thereto.

*“48. The application for relief under section 47 shall be made within the following period, that is to say,—*

*(1) in the cases mentioned in clause (c)(5), within 3[six months] of the date of the instruments :*

*[Provided that, where an agreement to sale of immovable property on which stamp duty is paid under Article 25 of the SCHEDULE I, is registered under the provisions of the Registration Act, 1908 and thereafter such agreement is cancelled by a registered cancellation deed for whatsoever reasons before taking the possession of the property which is the subject matter of such agreement, within a period of five years from the date of execution of the agreement to sale, then the application for relief may be made within a period of six months from the date of registration of cancellation deed.]*

*(2) in the case when for unavoidable circumstances any instrument for which another instrument has been substituted cannot be given up to be cancelled, the application may be made within six months after the date of execution of the substituted instruments ;*

*(3) in any other case, within 6[six months] from the date of purchase of stamps.”*

**13.** Section 48 of the said Act prescribes the period of limitation for Applications made under Section 47. Clause (1) provides six months from the date of the instrument in cases covered by Section 47(c)(5). Clause (2) prescribes six months from execution of the substituting instrument where the original cannot be surrendered for cancellation due to unavoidable circumstances. Clause (3), being residuary, grants six months from the date of purchase of the stamp in general.

**14.** Though it does provide an outer limit of 6 months to make the Application, it also does not say that Application made beyond the period of 6 months will not be entertained. In the Stamp Act, there is

no provision conferring power of condonation to the Authority under the Act or any provision which states that power of condonation cannot be exercised after the extended period of limitation.

**15.** On analysis of the Stamp Act, I find that there is no provision which excludes applicability of Section 5 of the Limitation Act, 1963 to the Stamp Act and more particularly under Section 48 of the said Act which provides for the time limit for making Application for refund of Stamp Duty. Though equally speaking Authority constituted under the Stamp Act does not have the power to condone the delay if Application is made beyond the time specified in Section 48 of the said Act. However it is seen that the merits have not been considered while passing the impugned order. Hence the moot question is '*Is the Petitioner remediless?*' In the present case Petitioner has averred that delay was due to pendency of Government Approval which later came to be rejected 8 months later after payment of Stamp Duty due to which Petitioner could not have filed the Refund Application earlier. Conduct of Petitioner is not in question. Petitioner was entirely reliant on the Government approval. Once that was rejected, the SPA fell through and could not be fructified even though it was executed by parties. However that would *prima facie* not result into Respondent – State retaining the stamp duty amount.

**16.** Evidently in view of the aforesaid discussion Application by Petitioner though styled under Section 47 of the said Act does not strictly fall within the ambit of the said provision. It is settled law that mere reference to an incorrect statutory provision cannot disentitle a citizen from a legitimate claim for refund, if otherwise such entitlement flows from the statute.

**17.** In the present case Share Purchase Agreement became void and unenforceable on rejection of the mandatory Government approval under Press Note No.3 which was entirely beyond the control of Petitioner. Since Petitioner had paid stamp duty for the transaction that did not materialize, refund cannot be denied merely on the ground of limitation or due to an incorrect reference to a statutory provision. What is material is the substance of the claim rather than its form. Therefore Petitioner's right to refund must be assessed on the basis of its statutory entitlement and not defeated by procedural technicalities. Mr. Sanklecha has argued that the SPA had fructified its purpose and on receiving Government approval parties were obligated to take further steps as stipulated in the SPA. Hence according to him, the stamp duty paid on the SPA is not refundable. This argument of the Respondents is not sustainable.

**18.** Attention is drawn to the decision of the Supreme Court in the case of *Committee- GFIL (1<sup>st</sup> supra)*. In the said matter, the issue

which fell for consideration was whether refund of stamp duty could be granted in respect of a transaction which had failed for reasons beyond the control of the parties. For ready reference, relevant observations contained in paragraph Nos. 26, 27 and 32 which squarely cover the present case are reproduced herein below:

*“26] In our considered opinion, while deciding a case of this nature, we have to also bear in mind one maxim of equity, which is well settled namely "actus curiae neminem gravabit" meaning - an act of the Court shall prejudice no man. In Broom's Legal Maxims 10th edition, 1939 at page 73 this maxim is explained saying that it is founded upon justice and good sense and afforded a safe and certain guide for the administration of law. This maxim is also explained in the same words in (Jenk. Cent.118. This principle is fundamental to any system of justice and applies to our jurisprudence. (See: Busching Schmitz Pvt. Ltd. vs. P.T. Menghani & Anr.(1977) 2 SCC 835 and Raj Kumar Dey & Ors. vs. Tarapada Dey & Ors. (1987) 4 SCC 398).*

*27] It is thus a settled principle of law based on principle of equity that a person cannot be penalized for no fault of his and the act of the court would cause no prejudice to any of his right.*

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*32] In our considered opinion, even if we find that applications for claiming refund of stamp duty amount were rightly dismissed by the SDM on the ground of limitation prescribed under Section 50 of the Act yet keeping in view the settled principle of law that the expiry of period of limitation prescribed under any law may bar the remedy but not the right, the applicants are still held entitled to claim the refund of stamp duty amount on the basis of the grounds mentioned above. In other words, notwithstanding dismissal of the applications on the ground of limitation, we are of the view that the applicants are entitled to claim the refund of stamp duty amount from the”*

**19.** Attention is also drawn to the decision in the case of **Rajeev Nohwar (2<sup>nd</sup> supra)** wherein refund of Stamp Duty was sought before execution of the Agreement to Sale. The Supreme Court in that case found that provisions of Section 47 had no application to the facts of

the case. The Application of claim for refund was allowed observing that rejection of such Application for refund would violate equity, justice and fairness where Applicant is made to suffer the brunt of judicial delay. The observations of the Supreme Court in paragraph Nos. 30 to 33 are material in regard to the present case and read thus:

*"30] Evidently, and for the reasons that we have indicated above, the application filed by the appellant did not fall within the ambit of Sections 47, 52 and 52A. It is true that the application for refund was titled with reference to the provisions of Section 47. But, it is well settled that a reference of a wrong statutory provision, cannot oust the citizen of an entitlement to refund which otherwise follows in terms of a statutory provision.*

*31] In the present case, the stamp paper was purchased bona fide in view of the agreement to sell which was to be executed by the appellant with the developer. There was a dispute with the developer which led to the institution of the proceedings before the NCDRC. There was nothing untoward in the conduct of the appellant and certainly no unreasonable delay on the part of the appellant in awaiting the outcome of the proceedings. The NCDRC allowed the complaint giving the option to the appellant of either going ahead with the agreement along with an award of compensation or, in the alternative, to seek a refund with interest. The appellant having exercised the latter option applied within two months from the order of the NCDRC for the grant of refund. The conduct of the appellant, therefore, cannot be held to be unreasonable nor was there any intentional or wanton delay on the part of the appellant in applying for a refund of stamp duty. Such an application must be filed within a reasonable period.*

*32] In Committee-GFIL (supra), a two-judge Bench of this Court was dealing with the issue of limitation prescribed in the Indian Stamp Act 1899. In this case, an auction sale of immovable properties was held by a committee constituted by this Court. Successful bidders deposited with the committee, the entire sale consideration along with the stamp duty. However, the transaction failed due to reasons beyond the control of the parties. The Court cancelled the transaction and directed the committee to refund the sale consideration with interest and permitted the purchasers to approach the State Government for refund of the stamp duty. The applications of the auction-purchasers seeking refund of stamp duty was rejected on the ground that the applications were time-barred. An application against the rejection of the refund applications was filed before this Court. This Court allowed the application on three grounds:*

(i) the transaction which was Court-monitored, could not be fulfilled for reasons beyond the control of the auction-purchasers. No act of the Court should prejudice a person; (ii) in view of the principle of restitution embodied in Section 65 of the Contract Act, any advantage received by a person under a void contract or a contract that becomes void is bound to be restored; and (iii) in light of equity and justice, the six months limitation period prescribed in Section 50 of the Indian Stamp Act 1899 must be read to mean six months from the date of the order of this Court.

**33]** We are conscious of the fact that as a general rule of law, the right to refund is a statutory creation. A refund can be sought in terms envisaged by statute. As discussed above, the case of the appellant is not specifically barred by any substantive provision. It is an established principle that this Court while exercising its power under Article 142 of Constitution must not ignore and override statutory provisions but must rather take note of the express statutory provisions and exercise its discretion with caution. Therefore, if a statute prescribes a limitation period, this Court must be slow to interfere with the delay under Article 142. However, in the case of an eventuality such as the instant case where the facts of the case are not covered by the statute, this Court under Article 142 will have the power to do complete justice by condoning the delay. We are of the view that since the delay in filling the application for refund in the instant case was due to the prolonged proceedings before the NCDRC, the application cannot be rejected on the ground of delay. A litigant has no control over judicial delays. A rejection of the application for refund would violate equity, justice and fairness where the applicant is made to suffer the brunt of judicial delay. Therefore, this is a fit case for the exercise of the power under Article 142 of the Constitution."

**20.** Reliance is also placed on paragraph No. 14 of the decision of the Supreme Court in the case of ***Bano Saiyed Parwad (5<sup>th</sup> supra)***.

Paragraph No. 14 reads as under:-

**"14.** In *Committee-GFIL v. Libra Buildtech (P) Ltd.* [*Committee-GFIL v. Libra Buildtech (P) Ltd.*, (2015) 16 SCC 31 : (2016) 3 SCC (Civ) 596], wherein the issue of refund of stamp duty under the same Act was in question, this Court has observed and held inter alia as under : (SCC pp. 44-45, paras 29 & 32)

**"29.** This case reminds us of the observations made by M.C. Chagla, C.J. in *Kaluram Sitaram (Firm) v. Dominion of India* [*Kaluram Sitaram (Firm) v. Dominion of India*, 1953 SCC OnLine Bom 39 : AIR 1954 Bom 50]. The learned Chief Justice in his distinctive style of writing observed as under in para 19 :

*[Kaluram (Firm) case [Kaluram Sitaram (Firm) v. Dominion of India, 1953 SCC OnLine Bom 39 : AIR 1954 Bom 50] , SCC OnLine Bom]*

*‘19. ... we have often had occasion to say that when the State deals with a citizen it should not ordinarily rely on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent Judges, as an honest person.’*

*We are in respectful agreement with the aforementioned observations, as in our considered opinion these observations apply fully to the case in hand against the State because except the plea of limitation, the State has no case to defend their action.*

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*32. In our considered opinion, even if we find that applications for claiming refund of stamp duty amount were rightly dismissed by the SDM on the ground of limitation prescribed under Section 50 of the Act yet keeping in view the settled principle of law that the expiry of period of limitation prescribed under any law may bar the remedy but not the right, the applicants are still held entitled to claim the refund of stamp duty amount on the basis of the grounds mentioned above. In other words, notwithstanding dismissal of the applications on the ground of limitation, we are of the view that the applicants are entitled to claim the refund of stamp duty amount from the State in the light of the grounds mentioned above.”*

**21.** In the present case, delay in seeking refund arose on account of compliance of mandatory procedure before the Government Authority, which was beyond the control of Petitioner. In view thereof, on the pretext of adherence to the strict period of limitation, Government cannot unjustly enrich itself by forfeiting the stamp duty amount deposited by Petitioner on the SPA. Furthermore, I am of the view that a litigant cannot be penalized for the time consumed before a Government Authority. To deny refund solely on the ground of limitation would offend equity, justice and fairness in the present case. I am therefore of the considered view that this is a fit case where

interference is warranted and Application for refund of Stamp Duty deserves to be allowed.

**22.** In view of my above observations, findings and citations relied on, the impugned order dated 09.10.2023 passed by Respondent No.2 is unsustainable. It is quashed and set aside. Resultantly Application for refund of stamp duty filed by Petitioner stands allowed. All steps taken in furtherance of the impugned order are set aside. Respondents are directed to refund the Stamp Duty amount of Rs.1,17,08,200/- to the Petitioner alongwith simple interest at the rate of 4% p.a. within a period of 4 weeks from today.

**23.** Writ Petition is allowed and disposed in the above terms.

[ MILIND N. JADHAV, J. ]

Ajay

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