

## JSA Prism Dispute Resolution (Constitutional Law)

April 2024

### **Bombay High Court upholds the authority of the State of Maharashtra to levy stamp duty on delivery orders under the Maharashtra Stamp Act, 1958**

The division bench of the Bombay High Court (“**Bombay HC**”) has in *Saurer Textile Solutions Pvt Ltd v. The State of Maharashtra & Ors and Connected Writ Petitions*<sup>1</sup> (“**Writ Petitions**”) held that the action of the State of Maharashtra in levying stamp duty on delivery orders (“**DO**”) under Article 29 of Schedule I of the Maharashtra Stamp Act, 1958 (“**Stamp Act**”) – (a) is within the legislative competence of the State; (b) does not intrude upon the legislative domain of the Parliament as reserved in Entries 41 and 83 of List I of Schedule VII to the Constitution of India; and (c) is not *ultra vires* Articles 246(1), 286(1)(b) and 286(2) of the Constitution of India.

#### **Brief Facts**

Saurer Textile Solutions Pvt. Ltd. and the other petitioners (“**Petitioners**”) are corporate entities who import goods from outside India and are required by the State of Maharashtra to pay stamp duty on the DOs to receive the delivery of imported goods. The Petitioners have been paying the stamp duty on the DOs since the enactment of the Stamp Act in 1958.

The process of import and export of goods begins with a foreign exporter/supplier engaging a ship owner to be the carrier of goods to be exported. The carrier issues a ‘Bill of Lading’ (“**BoL**”) to the exporter which stipulates the type, quantity and destination of the goods being carried. On the arrival of the goods at the port of destination, the carrier files the ‘Import General Manifest’ before the customs authority based on the invoice and the BoL. The containers are then unloaded at the port and taken for customs clearance.

Meanwhile, the importers file a ‘Bill of Entry’ (“**BoE**”) with the customs authority based on which the customs duty is computed. Once the customs duty is paid, the goods can be cleared out of the customs area but not before the carrier issues a DO directing the custodian of the goods to deliver the same to the person named therein or holder thereof. The importers are then required to pay stamp duty at 0.10% of the total assessed value of the goods under the Stamp Act and are not entitled to receive the delivery of the goods till the stamp duty on the DO is paid.

In February 2010, a single judge of the Gujarat High Court held that stamp duty cannot be levied on the BoE since – (a) it is not an instrument creating any right or liability in any person in respect of the goods; and (b) it does not amount to a DO within the meaning of the Bombay Stamp Act, 1958.<sup>2</sup> The division bench of the Gujarat High Court upheld this decision with a limited modification to hold that a BoL was a DO<sup>3</sup> (“**Gujarat High Court Judgement**”).

<sup>1</sup> 2024 SCC OnLine Bom 950.

<sup>2</sup> *Essar Steel Limited v. Superintendent of Stamps*, 2010 SCC OnLine Guj 1826.

<sup>3</sup> *State of Gujarat v. Reliance Industries Ltd.*, 2011 SCC OnLine Guj 5032.

Persuaded by the Gujarat High Court Judgement, the Petitioners filed Writ Petitions before the Bombay HC assailing the legislative competence of the State of Maharashtra to impose, levy, collect the stamp duty on DOs under Article 29 of the Stamp Act where the supply of goods takes place in the course of import of such goods into the territory of India as being *ultra vires* Articles 246(1), 286(1)(b) and 286(2) read with Entries 41 and 83 of List I of Schedule VII to the Constitution of India. The Petitioners *inter alia* contended that the constitutional scheme confers exclusive legislative competence on the Union of India in respect of import and export customs frontiers and the State was not empowered to levy any charges on the same.

## Issue

Whether the State of Maharashtra has the legislative competence to levy, impose and collect stamp duty on a DO under the MSA.

## Findings and Analysis

The division bench of the Bombay HC dismissed the writ petitions and *inter alia* observed the following:

1. The power to legislate under Article 246 of the Constitution of India must be read with the entries in the 3 (three) Lists which define the respective areas of legislative competence of the Union and State legislatures. The doctrine of pith and substance must be applied to ascertain the true nature of the legislation and the entry within which it would fall. When an enactment substantially falls within the powers expressly conferred by the Constitution of India upon the legislature which enacted it, it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another legislature.
2. The MSA is a fiscal measure enacted to secure revenue for the State on certain types of instruments. Under the Constitution of India, Parliament has the power to levy stamp duty on instruments specified in Article 246 read with Entry 91 of List I of Schedule VII whereas the State Governments have the power to levy stamp duty on instruments falling under Article 246 read with Entry 63 of List II of Schedule VII.
3. The Customs Act, 1962 ("**Customs Act**") provides for levy of customs duty when goods are transported across borders between countries. Customs duty are taxes that governments impose on export and import of goods. Customs duty falls within List I of Schedule VII to the Constitution of India and the Parliament enjoys exclusive jurisdiction to levy customs duty.
4. The definitions under the Customs Act demonstrate that the goods are cleared for home consumption only when cleared by customs authority. A BoE is presented for computing the customs duty. Once such duty is paid, the customs authority clears the goods and the import process insofar as the Customs Act stands concluded. It is only thereafter that the DO is issued by the shipper upon proof of payment of customs duty and its own charges. Accordingly, the DO does not form part of the chain of the import process and the taxing event occurs beyond the *course of import*. There is thus no overlap in the legislative field; and the State and the Centre are both well within their own occupied areas of legislation. The imposition of stamp duty on a DO in no manner encroaches upon the parliamentary legislative power in Entry 83 of List I of Schedule VII.
5. A plain reading of the Stamp Act suggests that a DO mentioned in Article 29 therein is not excluded from the definition of 'instrument' under Section 2(l) of the Stamp Act. Section 2(l) of the Stamp Act defines an 'instrument' to include *every* document which creates any right or liability but specifically excludes BoL. A DO is neither a BoL nor a BoE; and merely entitles the person named therein to take the delivery of goods after discharging the dues of a shipper (whose lien on the goods then stands extinguished). It is not necessary for a DO to be a document of title to fall within the purview of the definition of 'instrument' under the Stamp Act.
6. The computation of the stamp duty amount based on the valuation of goods does not preclude a DO from being an 'instrument' chargeable to stamp duty by the State. It is not the transaction which is liable to stamp duty but the 'instrument'.

7. The Gujarat High Court Judgement has no application in the State of Maharashtra since – (a) the challenge therein was with respect to the levy of stamp duty on a BOE which was held to be distinct from a DO and not an instrument contemplated under Article 24 of the Bombay Stamp Act, 1958 (as applicable in Gujarat); (b) the State of Maharashtra had not formulated any regulation equivalent to Regulation 16 of the Gujarat Maritime Board (Landing & Wharfage) Regulations, 1956 which provided for a BOL to be a DO; and (c) a BoL was specifically excluded from the definition of ‘instrument’ under Section 2(l) of the MSA (as applicable in Maharashtra) and a DO was not covered by any exclusions under the MSA.

## Conclusion

By this judgement, the Bombay HC has clarified the authority of the State of Maharashtra in levying stamp duty on DOs under the Stamp Act in respect of imported goods. This judgement carries significant fiscal implications on corporate entities in diverse sectors who import goods as a part of their business activities in Maharashtra. Simultaneously, this judgement also has a bearing on the revenue of the State of Maharashtra. It may be noted that the State of Gujarat has appealed against the Gujarat High Court Judgement before the Supreme Court of India which is currently pending adjudication. At present, there is no appeal against this Bombay HC judgement.

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