

SUPREME COURT OF INDIA

Chief Controlling Revenue Authority

Vs.

Costal Gujarat Power Ltd. & Ors.

C.A.No.6054 of 2015

(M.Y.Eqbal and Arun Mishra,JJ.,)

11.08.2015

JUDGMENT

M.Y.Eqbal,J.,

S.L.P.(Civil)No.32319 of 2013

1. Leave granted.

2. The Full Bench of the Gujarat High Court on reference made by the Chief Controlling Revenue Authority, State of Gujarat under Section 54(1A) of the Gujarat Stamp Act, 1958 (in short, “the Act”), passed the impugned judgment and order dated 3.12.2012 in Stamp Reference No.1/2011 answering the reference in favour of the respondent and against the Revenue holding that the respondent was not required to pay the dues of deficit stamp duty of Rs. 50,41,600/-.

3. The questions referred to the High Court for its opinion and decision arise as under :-

“(A) The deed of “indenture the deed of mortgage for delayed after assets” which was registered on 6.10.2009 vide Regn. No.3375 registered at office of Sub-Registrar, Mundra (District Kachchh) by the applicant has paid Rs.4,21,000/- whether as per provision of Sections 5, 3(a), 3(B) and the Schedule-1’s Articles 6 and 36(b) the applicant is required to pay deficit stamp duty of Rs.50,41,600/- or not.”

(B) The deed of “indenture the deed of mortgage for delayed after assets” which was registered on 6.10.2009 vide Regn.no.3375, at the office of the Sub-Registrar, Mundra (District Kachchh) by the applicant is required to be considered as per Schedule 1’s Articles 6 and 36 as per simple mortgage and whether the applicant is required to pay Rs. 4,21,600 or not?”

4. The facts of the case lie in a narrow compass.

5. The respondent is a Company named Coastal Gujarat Power Ltd and it needed financial assistance for setting up an Ultra Mega Power Project in the area of Kutch-Bhuj and for that purpose it secured assistance from few lenders. The lenders i.e. financial institutions, which were thirteen in number, formed a consortium as a trust and executed a security trustee agreement (STA) inter se appointing one banker, viz. the State Bank of India as the lead trustee, called the security trustee. The duties of the security trustee are carved out in the said agreement of security trustees.

6. The respondent executed an “Indenture of Mortgage for Delayed After Assets Deed’ with the State Bank of India, the said security trustee, mortgaging its assets as mentioned in the deed itself. The said document was presented for registration before the Sub-Registrar, Mudra, by paying stamp duty of Rs. 4,21,000/- and the deed was registered.

7. According to the appellant, the respondent was liable to pay Rs. 54,62,000/- on the said deed and, hence, demanded the balance amount of Rs. 50,41,000/- from the respondent by issuing show cause notice dated 5.11.2009. The issue was forwarded for consideration of the Deputy Collector, Stamp Duty Valuation Organisation, Bhuj-Kutch under Section 33 of the Act.

8. The respondent was given an opportunity of hearing and vide order dated April, 3, 2010, the Deputy Collector held that the respondent was liable to pay the deficit stamp duty with the amount of penalty of Rs.250/-.

9. The revision application filed by the respondent under Section 53[1] of the Act was dismissed vide order dated March, 28, 2011. The respondent thereafter made an application under Section 54[1-A] of the Act thereby giving rise to the Reference Proceedings.

10. By way of the Reference, the opinion of the High Court was sought on the questions referred hereinabove.

11. The High Court opined that the State of Gujarat is not entitled to recover any additional stamp duty based upon its perception of the legislative intendment behind Section 5 of the Act. The Court noted that stamp duty is payable on instruments and not on transactions. Therefore, merely because the intended effect was achieved by executing one single document as against different sets of documents, such fact would not enable the State authorities to justify the conclusion that the one single document falls under the purview of Section 5 of the Act. It was SBI alone which had the power to enforce the document against the respondent. The High Court further opined that there being only one instrument creating a mortgage by a borrower in favour of a security trustee, such relation between the borrower and security trustee is independent of the relationship between the borrower and the lending banks. The relationship between the borrower and the security trustee is that of a mortgagor and mortgagee. By taking aid of the provision of the Indian Trust Act and after creation of a different valid trust deed and making payment of stamp-duty thereon in accordance with law, the State Bank of India became the security trustee of the lending Banks and held the mortgage for and on behalf of those beneficiaries. Therefore, by the instrument in question,

either fictionally or otherwise, no separate or distinct matters or transactions are created. Thus, the applicant is the mortgagor and the S.B.I., in the capacity of a trustee, is the mortgagee. The instrument does not involve either “distinct matters” or “distinct transactions” so as to attract Section 5 of the Act. The Court found from the document in question that the State Bank of India is the only mortgagee under the instrument and no rights in the mortgaged property had been created in favour of secured parties or any other persons.

12. The High Court further opined that the principles laid down in *The Member, Board of Revenue vs. Arthur Paul Benthall'*, can be of no assistance to the State in this case. Indisputably, nobody disputed that the instrument in question is a mortgage deed and that according to the provisions of the Act, the same should be charged in accordance with the schedule 1. Thus, by no stretch of imagination, the said mortgage deed is treated as a combination of thirteen lenders by taking aid of the above principles. Finally, the Full Bench held that on consideration of the entire materials on record, the reference was answered as Point [A] No and Point [B] yes.

13. Hence, the present appeal by special leave.

14. Mr. Preetesh Kapur, learned counsel appearing for the appellant, Revenue Authority, assailed the impugned judgment passed by the Full Bench of the Gujarat High Court as being erroneous and contrary to the provisions of the Stamp Act in the matter of Payment of Stamp Duty. Learned counsel submitted that the High Court has failed to appreciate that the respondents had formed the consortium and had executed the present mortgage instead of several distinct instruments of mortgage with the sole purpose of evading Stamp Duty. Learned counsel submitted that admittedly the respondents had availed financial assistance from 13 lenders for its project and consequently, the respondent was required to execute mortgage deed in favour of the 13 lenders. However, in order to avoid payment of Stamp Duty on each mortgage deed, the respondent got the lenders to form a consortium and appointed State Bank of India as security trustee. Thus, in substance, the mortgage deed between the SBI on behalf of the lenders and respondent is a combination of 13 mortgages dealing with the respondents and such lenders, hence, the respondent cannot be allowed to evade payment of stamp duty by forming a consortium.

15. Learned counsel further submitted that the instrument in question relates to several distinct matters or distinct transactions inasmuch as the respondent borrower availed distinct loan from 13 different lenders, hence, the instrument falls under Section 5 of the Gujarat Stamp Act. Learned counsel also referred to the Government Circular dated 2.4.2007 and submitted that clause (ii) of the Circular specified that an instrument like the present one would fall within the purview of Section 5 of the Act.

16. Per contra, Mr. C.A. Sundaram, learned senior counsel appearing for the respondent, drew our attention to different clauses of mortgage deed and submitted that security created by the said mortgage in favour of the security trustee shall become enforceable only by security trustee upon the occurrence of

event of default. According to the learned senior counsel since no independent right has been created in favour of the lenders under the mortgage deed it cannot be held to be a separate and distinct transaction. According to Mr. Sundaram, Section 5 of the Act shall not have any application. Learned senior counsel further referred to the relevant paragraph of the judgment of this Court in *The Member, Board of Revenue vs. Arthur Paul Benthall*², and submitted that the ratio decided in the said Judgment fully applied in the present case.

17. It was further contended what has to be looked into for the purpose of stamp duty is the instrument, i.e., the Mortgage Deed, to see whether it dealt with distinct matters. The Mortgage Deed dealt with only one single matter, i.e., the mortgage of a single property with one mortgagee. Merely because there was beneficial interest for all the individual banks forming the consortium, this would not amount to distinct matters as per the ratio of the Benthall Case, since there were no distinct mortgages regarding distinct properties, but one common mortgage for one property. Hence, even assuming that the banks were seen to have an individual interest, there was in fact a commonality of such interest with all the other “secured lenders” and, therefore, the instrument did not deal with distinct matters.

18. According to the learned counsel, to decide as to whether and how such instrument is to be stamped it is that instrument alone that is to be looked at and not other documents executed between the parties or inter se the banks themselves or between the banks and a party to the instrument, since those are not the instruments being stamped. In fact, following such a course of action would amount to indirectly stamping the loan agreements and STA twice, which is impermissible in law, since those instruments had already been separately and individually stamped.

19. Lastly, it was contended that in any event, in the instant case, even if a doubt arises with regard to the interpretation of the Mortgage Deed, and as to whether it comprises distinct matters or not, the benefit of such doubt must be given to the assessee, i.e. the Respondent No.1, since it is a settled principle of interpretation of fiscal statutes that in case of ambiguity, the interpretation favourable to the assessee must be adopted.

20. In light of the aforesaid, it is submitted that the impugned judgment, which has rightly decided the matter in favour of the Respondent (assessee) and against the Appellant (revenue), does not suffer from any infirmity. Therefore, the present appeal ought to be dismissed by this Court. As a sequitor to the dismissal of the appeal, the appellant should also be directed to refund the excess stamp duty amount of Rs. 50,41,600/- that was deposited, under protest, by Respondent No.1.

21. Before deciding the question first of all we shall deal with the relevant document to ascertain the nature of loan.

“1. Security Trustee Agreement dated 15.9.2008. The persons set out in Schedule II have been collectively referred to as the “Senior Lenders” which includes their successors, transferee and assigns. These senior dealers entered into an agreement

with the respondent M/s. Costal Gujarat Power Limited, a company registered under the Companies Act and referred to as borrower.”

22. From the body of this agreement, it reveals that the borrower had requested the senior lenders i.e. thirteen banks/financial institutions to make available to the borrower loan details of which is more fully set out in Schedule II. Pursuant to the loan agreement entered into by the borrower and the senior lenders, each of senior lenders inter alia agreed to provide to the borrower credit and loan facilities to finance part of the project, costs of the project, more specifically set out in Schedule II. At this stage, we would like to extract herein Schedule II of the said Security Trustee Agreement:-

**SCHEDULE II
PART A
LIST OF ECB FACILITY LENDERS**

Sl. No	ECB Facility	Commitment (in Dollars millions)	Lending Office
1	Asian Development Bank	450	Asian Development Bank, 6 AD3 Avenue, Mandaluyong City 1550, Metro Manila, Philippines Facsimile: +63-2-636-2348
2	International Finance Corporation	450	International Finance Corporation, 2121 Pennsylvania Avenue, NW, Washington, D.C. 20433, United States of America
3	BNP Paribas, as a KEIC Covered Facility Lender	326.65	Structured Finance - Asset Finance - Export Finance, 37, Place du Marche Saint-Honore ACI CHDESAI 75031 Paris Cedex 01 France Attention: Commercial Support and Loan Implementation Facsimile: +33(0)1 43 1681 83, With reference to: MUNDRA
4	The Export- Import Bank of Korea	500	Head Office in Seoul, Korea The Export-Import Bank of Kora 16-1, Yeouido-dong Yeongdeungpo-gu Seoul, 150-996 Republic of Korea Facsimile: +82-2-3779-6747

**PART B
LIST OF RUPEE FACILITY LENDERS**

Sr. No.	Details of Rupee Facility Lender and Lending Office	Rupee Commitment (In Rupees Crores)
1	INDIA INFRASTRUCTURE FINANCE COMPANY LIMITED, having its Head Office at 1201-1207, Naurang House Kasturba Gandhi Marg, New Delhi - 110 001 Telephone No: 011-23736354 Fax No. 011 23736355	1800
2	ORIENTAL BANK OF COMMERCE, having its Head office at Harsha Bhavan, E-Block, Connaught Place, New Delhi 110 001, and having its Large Corporate Branch at 181-A, Maker Tower 'E', 18th Floor, Cuffe Parade, Mumbai 400 005 Telephone No: 022-221542.437 22 153836 Fax No. 022-22153533	550
3	STATE BANK OF BIKANER AND JAIPUR, having its Head Office at 5-A, Tilak Marg, Scheme, Jaipur - 302 016 and having its Commercial Network Branch at 239, P.D.Mello Road, Fort. Mumbai - 400 001. Telephone No: 022-226557777 2262 1854 Fax No. 022-22651324	200
4	State Bank of Hyderabad, having its Head Office At Gunfoundry, Hyderabad and having its Overseas Branch at Ashok Mahal, 1204, Tulloch Marg, Colaba, Mumbai-400 039. Telephone No.022-22042586/22820177 Fax No.022-22851321	100
5	State Bank of India with its Corporate Centre At State Bank Bhavan, Madame Cama road, Mumbai 400 021 and having its Project Finance SBU at 3rd Floor State Bank Bhavan, Madam Cama Road, Mumbai-400 021. Telephone No.022-22884150/22852538 Fax.022-22883021	2000
6	State Bank of Indore, having its head Office at 5, Y.N.Road, Indore-452 003 and having its Commercial Branch at Mittal Court 'B' Wing, Nariman Point, Mumbai-400021.TelephoneNo.022-228121557 / 22821558 Fax No.022-22835735	100
7	State Bank of Travancore, having its Head Office At Poojappura, Thiruvananthapuram-695012 and having Its Corporate Finance Branch at 12-115, Tulsiani Chambers,Nariman Point, Mumbai-400 021. Telephone No.022-30287007 Fax No.022-30287017.	100
8	The Housing and Urban Development Corporation Ltd.Having its Head Office at HUDCO Bhawan, Core-7A, India Habitat Centre Lodhi road, New Delhi-110003, And having its Mumbai Regional Office at Shreyas Chambers, 2nd Floor, 175	500

	Dr. D.N. Road, Fort, Mumbai-400 001. Telephone No.022-690080-84 Fax No.022-22690086	
9	Vijay bank, having its Head Office At 41/2 Head Office Building Trinity Circle, Mahatma Gandhi Road Bangalore G.P.O. Bangalore-560001 and having its Industrial Finance Branch at New Excelsior Building, 2 nd Floor, Fort Mubai-400 001. Telephone No.022-22079776 Fax No.022-22075994.	500
	Total =	5850

23. It further appears from the Security Trustee Agreement that the entire financing of the project by Senior Lenders agreed to be secured by first ranking mortgage and pari passu charge/issuing of all the moveable properties of the borrower. Further a first ranking pari passu charge of all the borrowers account and each of the other accounts required to be created by borrower under any transaction document.

24. For the aforesaid purpose, the Senior Lenders and the issuing bank (SBI) desired that the borrowers settle a trust for the beneficial interest of the Senior Lenders and the issuing bank (SBI) had to empower the security trustee to accept the lien created pursuant to the security document. At the request of the borrower, the Senior Lenders and the issuing bank agreed to act as security trustee for the secured parties on the terms and conditions contained in the agreement and in the financing document. By the said agreement, the State Bank of India (project finance SBI Bombay) was appointed as a security trustee to act on behalf of the secured parties, pursuant to the trust created by the said agreement.

25. On 6th October, 2009, an indenture on mortgage was executed by and between the borrower, M/s. Costal Gujarat Power Limited and State Bank of India as in the capacity as security trustee for the Senior Lenders as set out in the schedule of this mortgage deed. In the said deed it is mentioned inter alia that pursuant to the Senior Loan Agreement entered into between the borrower and senior lenders, each of the senior lenders have agreed to extend to the borrower the loan to the maximum extent set out in schedule-I. By this indenture, English Mortgage in respect of immovable property was created. The relevant clauses of Mortgage deed are set out herein below:-

(Emphasis given)

“2. Benefit of Indenture. The Security Trustee, acting for the benefit of the secured parties shall hold the Security created by the borrower in its favour this indenture over the mortgaged properties including convents and mortgages given by the borrowers pursuant hereto, upon trust for the benefit of the secured parties subject to the powers and provisions contained herein and in the Security Trustee Agreement, for the due

payment of the mortgage Debt and performance of all obligations under the financing Documents.

4. Grant and Transfers :-For the consideration aforesaid and as continuing security for the payment and discharge of the mortgage Debt and performance of all obligations under the Financing Documents by the Borrower hereby secured or intended to be hereby secured, the Borrower both hereby grant, assign, convey assure, charge and transfer into the Security Trustee for the benefit of the secured Parties by was of a first mortgage and charge) all the rights title, interest and benefit in all and singular the beneficial right title and interest of the Borrower in respect of the immovable property situated in situated in district Mundra in the State of Gujarat more particularly described in Schedule 2 hereinunder written (the “delayed After Acquired Assets”) together with all buildings erections and constructions of every description which are standing erected or attached or shall at any time hereafter during the continuance of the Security hereby lands and premises or any part thereof and all rights to use common areas and facilities and incidentals attached hereto, together with all trees, fences, hedges, ditches, ways sewers, drains, waters, watercourses, liberties, privileges, easements and appurtenances whatsoever to the said lands, hereditaments or premises or any part thereof whether presently in existence or in the future belonging to or in anyway appurtenant thereto and all the estate, right title, interest property claim and demand whatsoever of the Borrower into and upon the same which description shall include all properties of the above description whether presently in existence constructed or acquired hereafter (the “Mortgaged Properties”). To have and to hold all and singular the Mortgaged Properties into unto and to the use of the security Trustee Upon Trust and subject to the powers and provisions herein contained and subject also to the proviso for redemption hereinafter mentioned.

5. Pari Passu Ranking:- The mortgage and first charge created pursuant to security 4 hereto in favour of the Security Trustee for the benefit of the Secured parties shall rank pari passu inter-se and without and preference or priority over each other. The mortgage and first charge to be created in favour of the Security Trustee for the benefit of the Working Capital lenders and if approved in accordance with the Hedging Plan, the Hedge provides shall rank pari passu inter-se and with the Secured Parties and without any preference or priority over each other and the secured parties once such mortgage and charge in relation to the Mortgaged properties is created in their favour.”

26. Clauses 18.1 and 18.3 are also relevant and reproduced herein under:-

“18.1 Section 67A of the Transfer of Property Act, 1882:- The provisions of Section 67-A of the Transfer of Property ct, 1882, shall not apply to these presents. Notwithstanding that the Security Trustee may hold two of more mortgages executed by the Borrower including these presents in respect of which the Security trustee has the right to obtain the kind of decrees under section 67 of the Transfer of Property Act, 1882, the Security Trustee shall be entitled to sue and obtain such decree on any

of such mortgages without being bound to sue on all such mortgages in respect of which the mortgage money shall have become due.”

27. Clause 23.1, deals with the manner of payment of stamp duty. The said clause reads as under:-

“23.1. Stamp Duty and Other Fees on Execution, Registration, etc.:— The Borrower shall pay all stamp duty, other duties, taxes, fees, penalties or other charges payable on or in connection with the execution, issue, delivery, registration of this Indenture, the Security Trustee Agreement and any document, act and registration performed pursuant hereto, if and when the Borrower may be required to pay the same according to any of the Financing Documents or according to the Applicable Law for the time being or at any time in orce in the State in which its properties are situated. If the Borrower fails to pay the stamp duty, other duties, Taxes, fees, penalties or other charges payable hereinabove, then the Security Trustee may (but is not obligated to) pay such amounts, on behalf of the Borrower. Any money paid by the Security Trustee as aforesaid, shall constitute a part of the Mortgage Debt.”

28. From the facts discussed and narrated hereinabove, it is manifest that the instrument of mortgage came into existence only after separate loan agreements were executed by the borrower with the lenders with regard to separate loan advanced by those lenders to the respondent borrower. The mortgage deed which recites at length as to how and under what circumstances property was mortgaged with the security trustee for and on behalf of lender bank.

29. When several matters are contained in one instrument, what stamp is payable thereon in England has been dealt with and Halsbury’s Law of England 4th Edition volume 44 paragraph 613 at page 399 is quoted herein below:-

“613. Instrument relating to several matters. Except where there is statutory provision to the contrary, an instrument containing or relating to several distinct matters is to be separately charged, as if it were a separate instrument, with stamp duty in respect of each of the matters, and an instrument made for any consideration in respect of which it is chargeable with ad valorem duty, and also for any further or other valuable consideration, is separately chargeable, as if it were a separate instrument, in respect of each of the consideration.”

30. Coming to the provisions contained in the Stamp Act, we have to see as to whether the provision of Section 5 is ancillary to Section 4 or a separate and distinct provision. For better appreciation Sections 4, 5 and 6 of the Gujarat Stamp Act is reproduced herein below:-

“Section 4- Several instruments used in single transaction of sale, mortgage or settlement.

(1) Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principle instrument only shall be

chargeable with the duty prescribed in Schedule I for the conveyance, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of 1 [one hundred rupees] instead of the duty (if any) prescribed for it in that Schedule.

(2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument. Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

Section 5 - Instrument relating to several distinct matters or distinct transactions. Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instrument, each comprising or relating to one of such matters or distinct transactions, would be chargeable under this Act.

6. Instruments coming within several descriptions in Schedule I.-Subject to the provisions of the last preceding section, an instrument so framed as to come within two or more of the descriptions in Schedule I, shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties: Provided that nothing in this Act contained shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has-been paid.”

31. From bare reading of these provisions, it is clear that Section 4 deals with single transaction completed in several instruments, whereas Section 5 deals only with the instrument which comprises more than one transaction and it is immaterial for the purpose whether those transactions are of the same category or of different categories.

32. It appears from the trustee document that altogether 13 banks lent money to the mortgagor, details of which have been described in the schedule and for the repayment of money, the borrower entered into separate loan agreements with 13 financial institutions. Had this borrower entered into a separate mortgage deed with these financial institutions in order to secure the loan there would have been a separate document for distinct transactions. On proper construction of this indenture of mortgage it can safely be regarded as 13 distinct transactions which falls under Section 5 of the Act.

33. Both the learned counsel put reliance on the five Judges Constitution Bench Judgment of this Court in the Case of The Member, Board of Revenue vs. Arthur Paul Benthall (supra). The said case originated from a reference made to the High Court of Calcutta by the Revenue Authorities seeking opinion with regard to the stamp duty payable in the instrument. The respondent in that case was at the material time the Managing Director of M/s. Bird and Co. Ltd. and Messrs F.W. Heilgers and Com. Ltd which were acting Managing Agents of several

Companies Act under the Indian Companies Act. The respondents were also Director of a number of other Companies, and had on occasions acted as liquidator of some Companies, as executor or administrator of estates of deceased persons and as trustee of various estates. He proposed to execute power of attorney empowering the M/s. Douglas Chisholm Fairbairn and John James Brims Southerland jointly and severally to act for him in his individual capacity and also as executor administrator, trustee, Managing Agents, liquidator, and all other capacities. The Collector referred the matter under Section 56(2) of the Act to the decision of Chief Controller, Revenue Authority, who eventually referred it to the High Court of Calcutta stating his own opinion that stamp duty was payable on the power "for as many respective capacities as the principal executes the power". The majority view of the Bench held that the different capacities of the executants would not constitute the distinct matter for the purpose of Section 5 of the Act and that the proper duty and instrument was payable under Article 48(d) of Schedule 1(a) of the Stamp Act.

34. Answering the Reference, the Constitution Bench of this Court elaborately discussed the scope and object of Sections 4, 5, and 6 of the Stamp Act and finally allowed the appeal. Their Lordship held:-

"We are unable to accept the contention that the word "matter" in section 5 was intended to convey the same meaning as the word "description" in section 6. In its popular sense, the expression "distinct matters" would connote something different from distinct "categories". Two transactions might be of same description, but all the same, they might be distinct. If A sells Black-acre to X and mortgages White-acre to Y, the transactions fall under different categories, and they are also distinct matters. But if A mortgages Black-acre to X and White-acre to Y, the two transactions fall under the same category, but they would certainly be distinct matters. If the intention of the legislature was that the expression 'distinct matter' in section 5 should be understood not in its popular sense but narrowly as meaning different categories in the Schedule, nothing would have been easier than to say so. When two words of different import are used in a statute in two consecutive provisions, it would be difficult to maintain that they are used in the same sense, and the conclusion must follow that the expression "distinct matters" in section 5 and "description" in section 6 have different connotations."

35. Their Lordships further held that:-

"When a person possesses both a personal capacity and a representative capacity, such as trustee, and there is a delegation of power by him in both those capacities, the position in law is exactly the same as if different persons join in executing a power in respect of matters which are unrelated. There being no community of interest between the personal estate belonging to the executant and the trust estate vested in him, they must be held to be distinct matters for purposes of section 5. The position is the same when a person is executor or administrator, because in that capacity he represents the estate of the deceased, whose persona is deemed to continue in him for purposes of administration.

36. We have also gone through the provisions contained in Sections 33, 39, Article 6 and 6(b) of the Act as also Bombay Stamp (Gujarat Second Amendment) Rules, 2007 and the Circular dated 2.4.2007. After giving out anxious consideration to those provisions and also in the light of the ratio decided by the Constitution Bench of this Court in The Benthall case (supra), we are of the definite opinion that the High Court has committed serious error of law in interpreting the provisions of Sections 5 and 6 of the Act. Consequently, the answer given by the High Court on the Reference cannot be sustained in Law.

37. As a result, this appeal is allowed, the impugned order is set aside. It is held that the respondent is liable to pay deficit stamp duty together with interest as directed by the revenue authorities. However, there shall be no order as to costs.