

RAJASTHAN HIGH COURT

Choksi Heraeus Pvt. Ltd

Vs.

State, (Rajasthan)

C.W. No. 458 of 2006

(N. P. Gupta and Munishwar Nath Bhandari, JJ.)

01.11.2007

ORDER

N. P. Gupta and Munishwar Nath Bhandari, JJ.

1. This bunch of writ petitions (detailed in Schedule-A) have been filed before the Division Bench, seeking to challenge the orders passed by the Collector, under Chapters IV, V and Clause (a) of the proviso to Section 29 and/or Section 35 of the Rajasthan Stamp Act, 1998, and seeking to challenge the validity of the provisions of proviso to Section 65(1) of the Rajasthan Stamp Act, 1998, and since for the present purposes they involve the common question of law, petitions are being disposed by this common order.

2. We need not encumber the judgment by narrating facts of each individual case, and may confine our judgment to the validity of provisions noticed above only, as the matters have come up before Division Bench only on account of validity of above provisions having been challenged.

3. To start with, we may be gainfully reproduce the provisions of Section 65 of the Rajasthan Stamp Act, 1998, hereinafter referred to as the Act, as a whole, which reads as under :-

"65. Revision by the Chief Controlling Revenue Authority.- (1) Any person aggrieved by an order made by the Collector under Chapters IV and V and under Clause (a) of the first proviso to Section 38 and under Section 35 of the Act, may within 90 days from the date of order, apply to the Chief Controlling Revenue Authority for revision on such order :

Provided that no revision application shall be entertained unless it is

accompanied by a satisfactory proof of the payment of fifty per cent of the recoverable amount.

(2) The Chief Controlling Revenue Authority may suo motu or on information received from the registering officer or otherwise call for and examine the record of any case decided in proceeding held by the Collector for the purpose of satisfying himself as to the legality or propriety of the order passed and as to the regularity of the proceedings and pass such order with respect thereto as it may think fit :

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter."

4. Out of the above provisions, it is only the proviso appended to Section 65(1), which is under challenge.

5. While arguing on the side of the petitioners, to challenge the proviso, it was contended by Mr. Mehta, that against the order of the Collector passed under Chapters-IV and V, and under Clause (a) of first proviso to Section 29, and under Section 35 of the Act, the only remedy provided under the Act is the one under Section 65(1), which in substance is a remedy in the nature of appeal, and by incorporating the proviso to this sub-section, the remedy of the appeal has been rendered illusory, rather meaningless, inasmuch as the condition is onerous, burdensome, and cumbersome, and by this reason it is very much unreasonable, and arbitrary. The other argument advanced is, that Section 65 of the Act comprises of two parts, being sub-section (1) and sub-section (2), inasmuch as under sub-section (1) any person aggrieved by an order made by the Collector under the aforesaid provision can apply for revision; while under sub-section (2) the Chief Controlling Revenue Authority may suo motu, or on information received from the Registering Officer, or otherwise, call for and examine the record of any case decided, in proceeding held by the Collector, for the purpose of satisfying himself as to the legality or propriety of the order passed, and as to the regularity of the proceedings, and pass such order with respect thereto as it may think fit. It is contended, that the requirement of pre-deposit, as comprised in the proviso to sub-section (1), is not attracted in the case of eventuality comprehended by sub-section (2), thus the provision is discriminatory, and is liable to be struck down. Then, it was also submitted, that the stamp duty is a direct tax, and the provision for pre-deposit as comprised in other taxing provisions, is in the legislations which cover indirect taxes, and even in those provisions the authority is given discretion to waive the condition, while no such provision has been enacted in the present Act, conferring any discretion to waive the condition, even

though the matter is of direct tax. Then it was submitted, that in the proviso the expression used is "recoverable amount" while there is nothing to show as to how this figure of "recoverable amount" is to be arrived at, therefore, the provision is vague. It was also contended that the proviso has the effect of taking away the fundamental right of citizen to hold the property, inasmuch as in case of an arbitrary demand being raised by the Collector, in the event of any person purchasing the property, if the purchaser is not able to satisfy the demand, he cannot be allowed to challenge the same, without fulfilling the condition of pre-deposit, and consequently he stands deprived of the property, therefore, also the provision is bad. Then, the learned counsel relied upon the judgment of Hon'ble the Supreme Court, in *Mardia Chemicals Ltd. v. Union of India*, reported ¹ in to contend, that in that judgment Hon'ble SC had struck down identical provision contained in Section 17(2) of the Securitisation and Reconstructions of Financial Assets and Enforcement or Security Interest Act, 2002. It was also argued that under Section 65, the remedy, though given the Homenclature of revision, but then in substance, it is right of appeal, as, against the orders detailed in sub-section (1) the aggrieved person has no other remedy, and therefore, it is required to be treated as appeal, and such a right of appeal cannot be curtailed, albeit taken away, by imposing such condition of pre-deposit. Learned counsel cited the judgment of Hon'ble the Supreme Court, in *H. S. Ram Kanai Jamini Ranjan Pal Pvt. Ltd. v. Member, Board of Revenue*, reported ² in *Bhavya Apparels Private Limited v. Union of India*, reported in ³ The Division Bench judgment of this Court, in *Gaurav Gupta v. State*, reported ⁴ in was also cited.

6. Mr. Varun Goyal supported the contentions, by adding, that in the Stamp Act there is no provision for refund, and therefore, the proviso (the impugned provision) is confiscatory in nature, inasmuch as, in the event of revision petition being allowed, and the order impugned being set aside, the person stands deprived of the amount deposited, by way of complying with the impugned proviso. Mr. Goyal also cited judgment of Madras High Court, in *Royal Insulation (P) Ltd. v. Commercial Tax Officer, Mahali Assessment Circle, Chennai*, reported ⁵ in and submitted that in judgment the Division Bench of Madras High Court has recommended the State Government, to issue an Ordinance, to provide for relaxation. He has also relied upon Division Bench judgment of this Court, rendered in bunch of writ petitions led by *Santu Ram v. State of Rajasthan, being D. B.* ⁶ to contend, that certain conditions of security deposit provided in Colonisation Act was held to be unreasonably and harshly onerous.

7. Then, Mr. K. N. Joshi relied upon the judgment of this Court, in *State of Rajasthan v. Bhilwara Spinning Mills*, reported ⁷ in

8. On the other hand, Mr. N. M. Lodha submitted, that for the purpose of judging the vires of any legislation, what should be the relevant considerations, is a matter, which is no more res integra, and is settled by series of judgments of Hon'ble the Supreme Court, and in that regard cited the judgments in, *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh*, reported ⁸ in *Nand Lal v. State of Haryana*, reported in ⁹ *State of Bihar v. Bihar Distillery Ltd.*, reported in ¹⁰ *Union of India v. Elphinstone Spinning and Weaving Co. Ltd.*, reported in ¹¹ Then the judgment in *Prafulla Kumar Das v. State of Orissa*, reported in ¹² was cited to contend, that hardship cannot be ground for declaring the legislation ultra vires. Then it was submitted, that in various judgments of Hon'ble the Supreme Court, including those in *Vijay Prakash D. Mehta v. Collector of Customs*, reported in ¹³ and the *Anant Mills Co. Ltd. etc. v. The State of Gujarat*, reported in ¹⁴ and of this Court, in *M/s. G. S. Pharmbutor Pvt. Ltd. v. State of Rajasthan*, reported in ¹⁵ it has been held, that condition can be imposed while making provision for right of appeal i.e. right of appeal can be circumscribed by certain conditions as is thought appropriate by legislature. Then, learned counsel also relied upon Division Bench judgment of this Court, in *Pappu Ram v. State of Rajasthan*, ¹⁶ being *D.B. Lachhmandas v. State of M. P.*, reported in ¹⁷ *Monoranjan Chakraborty v. State of Tripura*, reported in ¹⁸ to contend, that in these judgments the provision for such pre-deposit has been upheld. Then, it was submitted that this condition as imposed by the proviso, cannot be said to be arbitrary, and merely because it is claimed by the petitioners to be onerous, burdensome, or cumbersome, on that ground it cannot be struck down. The judgment of Hon'ble the Supreme Court, in *Mardia Chemicals* was distinguished by Mr. Lodha, contending, that therein Hon'ble the SC had catalogued the considerations, guided whereby the provision was struck down, as have been enlisted in para 64, while in the present case, the majority of those conditions do not exist, including the fact, that in that case the action of Bank under Section 13 was taken to be not an outcome of an adjudicatory procedure, and seeking of remedy under Section 17 was found to be only approaching the adjudicating authority of the first instance, while in the present case the adjudicatory authority is the Collector, and the remedy against the order passed by the Collector is available, thus the judgment of Hon'ble the SC in *Mardia Chemical's* case (AIR 2004 SC 2371) does not cover the controversy involved in the present case. Then, it was also submitted that in view of various judgments of Hon'ble the SC referred to above, it is clear, that provision cannot be struck down, as it is neither ultra

vires, nor is otherwise unreasonable, requiring to be struck down. Learned counsel also distinguished the judgment cited by Mr. K. N. Joshi, and Mr. Varun Goyal.

9. We have considered the submissions, and have gone through the various judgments.

10. The first argument raised by the learned counsel appearing for the petitioners is that the provision of revision under Section 65 is in substance, a provision for appeal, therefore, provisions for appeal should not have been subjected to any condition. To support this argument, learned counsel has referred judgment of the Apex Court in *M/s. Ram Kanai Jamini Ranjan Pal Pvt. Ltd. v. Member, Board of Revenue, West Bengal*¹⁹ In para 12 of the said judgment, the provisions of Section 20(3) of Bengal Finance (Sales Tax) Act were found to be widely worded and there was nothing in the Act of the Rules to limit or circumscribe the revisional power therein. Hence, it was held that the power of the Commissioner was not limited as provided under Section 115 of Civil Procedure Code for exercising revisional powers by the High Court. During the course of argument, learned counsel for the petitioners was asked as to how the challenge to constitutional validity of proviso to Section 65(1) of the Rajasthan Stamp Act, 1998 (hereinafter referred to as 'the Act of 1998') is going to support by this argument, even if the revisional power provided under Section 65 of the Act of 1998 is treated as a power of appeal, because the right of appeal is again not an inherent right, but only a statutory right. The learned counsel for the petitioners was unable to show that the argument raised above, in any way, helps the petitioner to strengthen their argument for challenging the proviso to Section 65(1) of the Act of 1998. Therefore, the first argument seems to have been raised, only for sake of argument; however, while examining the constitutional validity of proviso to Section 65(1) of the Act of 1998, we will further examine it by treating the revisional power to be appellate power.

11. The next argument raised by the learned counsel for the petitioners is that Section 65 of the Act comprises two parts being under sub-section (1) and sub-section (2). Under sub-section (1), any person aggrieved by an order passed by the Collector can apply for revision, while under sub-section (2), Chief Controlling Revenue Authority may suo motu or on information received from the registering officer, or otherwise, call for and examine the record of any case decided in the proceeding held by the Collector. It was contended that the requirement of pre-deposit as provided in the proviso to sub-section (1), is not attracted in the case covered by sub-section (2), thus liable to be struck down being discriminatory. Considering this argument, we found that proviso to sub-section (1) cannot be struck down on the argument raised above,

because sub-section (1) of Section 65 gives a remedy to any person aggrieved by an order passed by the Collector and the said remedy is provided on the condition of payment of fifty per cent of recoverable amount, whereas sub-section (2) gives power to the Chief Controlling Revenue Authority to examine an order passed by the Collector suo motu or on information received from the registering officer or otherwise. The word "otherwise" used covers those matters where a revision is preferred under sub-section (1), therefore, while sub-section (1) gives a remedy to any person aggrieved of the order passed by the Collector, sub-section (2) gives authority to the Chief Controlling Revenue Authority for exercising such powers in the circumstances provided under sub-section (2) itself. Therefore, provisions of sub-sections (1) and (2) exist in different context provided therein. Hence, it cannot be said to be bringing about any discrimination on the anvil as contended because a remedy provided for aggrieved person on certain conditions cannot be equated with the power of revisional authority to call for and examine the matter suo motu or on information. Hence, we are not impressed with this argument raised by the learned counsel for the petitioners.

12. While challenging the proviso to sub-section (1) of Section 65 of the Act, 1998, learned counsel contended that a condition on pre-deposit for maintaining the revision petition is a burdensome condition which, in fact, takes away right of revision of a person aggrieved by the order of Collector. It was urged that the remedy of revision has been rendered illusory, rather meaningless, inasmuch as the condition of pre-deposit is onerous, burdensome and cumbersome, hence it becomes unreasonable and arbitrary thus deserves to be declared as unconstitutional. To support the argument, learned counsel for the petitioners referred the judgment of *Mardia Chemicals Ltd. v. Union of India*, reported ²⁰ in In the said judgment, the Hon'ble Apex Court declared sub-section (2) of Section 17 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as unconstitutional, where for maintaining an appeal, condition of pre-deposit was provided. According to the learned counsel for the petitioners, condition as exists in proviso to sub-section (1) of Section 65 of the Act of 1998 is similar to sub-section (2) of Section 17 of the Act, 2002 which was then declared to be unconstitutional by the Apex Court. Thus, it was submitted that based on the judgment of the Apex Court, proviso to sub-section (1) of Section 65 should be declared to be unconstitutional. In that regard, reference to paras Nos. 55 to 64 was given, which are reproduced hereunder:-

"55. We may then turn to the arguments raised on behalf of the petitioners that

the remedy before the Debts Recovery Tribunal under Section 17 of the Act is illusory, burdened with onerous and oppressive condition of deposit of 75% of the amount of the demand notice before an appeal can be entertained by the Tribunal. We feel that it would be difficult to brush aside the challenge made to the condition of such a deposit. Sub-section (2) of Section 17 itself says that no appeal shall be entertain able unless the borrower has deposited the aforesaid sum of amount claimed. Much stress has been given in reply to the proviso to sub-section (2) of Section 17, according to which the Tribunal has power to waive or reduce the amount. While waiving the condition of depositing the amount or reducing it, the Tribunal is required to record reasons for the same. It is submitted for the respondents that in an appropriate case, DRT which is presided over by a member of a higher judicial service, would exercise its discretion and may waive or reduce the amount required to be deposited in deserving cases. It is, therefore, not an absolute condition which must in all cases and all circumstances be fulfilled irrespective of the special features of a particular case.

56. The contention of the petitioner is that in the first place such an oppressive provision should not have been made at all. It works as a deterrent or as a disabling provision impeding access to a forum which is meant for redressal of the grievance of a borrower. It is submitted that where the possession of the secured assets has already been taken over or the management of the secured assets of the borrower including the right to transfer the same, in that event it would not at all be necessary to burden the borrower doubly with deposit of 75% of the demand amount. In a situation where the possession of the secured assets has already been taken over or its management, it is highly unreasonable further to ask for 75% of the amount claimed before entertaining the grievance of the borrower.

57. Secondly, it is submitted that, it would not be possible for a borrower to raise funds to make deposit of the huge amount of 75% of the demand, once he is deprived of the possession/ management of the property, namely, the secured assets. Therefore, the condition of deposit is a condition of impossibility which renders the remedy made available before DRT as nugatory and illusory. The learned Attorney General refutes the aforesaid contention. It further submitted that such a condition of pre-deposit has been held to be valid by this Court earlier and a reference has been made to SCC at p. 302 in *Anant Mills Co. Ltd. v. State of Gujarat*²¹ to submit that such a provision is made to regulate the

exercise of the right of an appeal conferred upon a person. The purpose is that right of appeal may not be abused by any recalcitrant party and there may not be any difficulty in enforcing the order appealed against if ultimately it is dismissed and there may be speedy recovery of the amount of tax due to the Corporation.

58. In another decision relied upon, namely *Seth Nand Lal v. State of Haryana*²² there was no provision for a waiver or reduction of amount of pre-deposit, it is submitted, even that (sic then) the provision was held to be valid as the purpose was to prevent frivolous appeals and revisions which impede the implementation of the ceiling policy. Referring to yet another decision in *Vijay Prakash D. Mehta Collector of Customs (Preventive) (1988) 4 SCC 402 : AIR 1988 SC 2010*, it is submitted that right to appeal is neither an absolute right nor an ingredient of natural justice which principles are to be followed in judicial and quasi-judicial proceedings. A right of appeal is a statutory right and it can be circumscribed by the conditions. We also find that there are further observations to the effect the condition is for the purpose to act in terrorem to make the people comply with the provisions of the law. *Shyam Kishore v. Municipal Corporation of Delhi*,²³ has been referred to submit that a similar provision was upheld without there being any provision for waiver of the condition. The submission is that such a provision as that of pre-deposit before maintaining an appeal is not unknown to law and there are several other statutes containing similar provisions. Emphasis is on the provision of waiver or reduction of the amount required to be paid which, it is submitted, strikes a balance between the right of a person to appeal and the right of the person appealed against for speedy recovery of his dues.

59. We may like to observe that proceedings under Section 17 of the Act in fact, are not appellate proceedings. It seems to be a misnomer. In fact it is the initial action which is brought before a forum as prescribed under the Act, raising grievance against the action of measures taken by one of the parties to the contract. It is the stage of initial proceeding like filing a suit in civil Court. As a matter of fact proceedings under Section 17 of the Act are in lieu of a civil suit which remedy is ordinarily available but for the bar under Section 34 of the Act in the present case. We may refer to a decision of this Court in *Gange Bai v. Vijay Kumar*,²⁴ where in respect of original and appellate proceedings a distinction has been drawn as follows (SCC p. 397, Para 15)

"There is a basic distinction between the right of suit and the right of appeal.

There is an inherent right in every person to bring a suit of civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous to claim that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute."

60. The requirement of pre-deposit of any amount at the first instance of proceedings is not to be found in any of the decisions cited on behalf of the respondent. All these cases relate to appeals. The amount of deposit of 75% of the demand, at the initial proceeding itself, sounds unreasonable and oppressive, more particularly when the secured assets/the management thereof along with the right to transfer such interest has been taken over the secured creditor or in some cases property is also sold. Requirement of deposit of such a heavy amount on the basis of a one-sided claim alone, cannot be said to be a reasonable condition at the first instance itself before start of adjudication of the dispute. Merely giving power to the Tribunal to waive or reduce the amount, does not cure the inherent infirmity leaning one-sidedly in favor of the party, who, so far has alone been the party to decide the amount and the fact of default and classifying the dues as NPAs without participation/ association of the borrower in the process. Such an onerous and oppressive condition should not be left operative in expectation of reasonable exercise of discretion by the authority concerned. Placed in a situation as indicated above, where it may not be possible for the borrower to raise any amount to make the deposit, his secured assets having already been taken possession of or sold, such a rider to approach the Tribunal at the first instance of proceedings, captioned as appeal, rendered the remedy illusory and nugatory.

61. In the case of *Seth Nandlal v. State of Haryana*,²⁵ while considering the question of validity of pre-deposit before availing the right of appeal the Court held: (SCC p. 590, Para 22)

Right of appeal is a creature of the statute and while granting the right the legislature can impose conditions for the exercise of such right so long as the conditions are not so onerous as to amount to unreasonable restrictions rendering the right almost

(Emphasis supplied)

While making the said observation this Court referred to the decision in the case of Anant Mills Co. Ltd. In both the above noted decisions this Court had negated the plea raised against pre-deposit but in the case of Seth Nand Lal it was found that the condition was not so onerous since the amount sought to be deposited was meager and that too was combined to the landholding tax payable in respect of the disputed area i.e. the area or part thereof which is declared surplus by the prescribed authority (emphasis supplied) after leaving the permissible area to the appellant. In the above circumstances it was found that even in the absence of a provision conferring discretion on the appellate Authority to waive or reduce the amount of pre-deposit, it was considered to be valid, for the two reasons indicated above. The facts of the case in hand are just otherwise.

62. As indicated earlier, the position of the appeal under Section 17 of the Act is like that of a suit in the Court of the first instance under the Civil Procedure Code. No doubt, in suits also it is permissible, in given facts and circumstances and under the provisions of the law to attach the property before a decree is passed or to appoint a receiver and to make a provision by way of interim measure in respect of the property in suit. But for obtaining such orders a case for the same is to be made out in accordance with the relevant provisions under the law. There is no such provision under the Act.

63. Yet another justification which has been sought to be given for the requirement of deposit is that the secured assets which may be taken possession of or sold may fall short of the dues, therefore, such a deposit may be necessary. We find no merit in this submission too. In such an eventuality recourse may have to be taken to sub-section (10) of Section 13 where a petition may have to be filed before the Tribunal for the purpose of making up for the shortfall.

64. The condition of pre-deposit in the present case is bad rendering the remedy illusory on the grounds that : (i) it is imposed while approaching the adjudicating authority of the first instance, not in appeal, (ii) there is no determination of the amount due as yet, (iii) the secured assets or their management with transferable interest is already taken over and under control of the secured creditor, (iv) no special reason for double security in respect of an amount yet to be determined and settled, (v) 75% of the amount claimed by no means would be a meagre amount, and (vi) it will leave the borrower in a position where it would not be possible for him to raise any funds to make deposit of 75% of the undetermined demand. Such conditions are not alone

onerous and oppressive but also unreasonable and arbitrary. Therefore, in our view, sub-section (2) of Section 17 of the Act is unreasonable, arbitrary and violative of Article 14 of the Constitution."

13. Referring to the paras quoted above, it was contended that grounds as enumerated in Para 64, exist in the present case also. Therefore, the judgment of the Hon'ble Apex Court in the case of *Mardia Chemicals Ltd.*, AIR 2004 SC 2371 (supra) fully applies to the present case.

14. Learned counsel further referred to the judgment rendered in the bunch of writ petitions led by *D. B. Civil Writ Petition No. 6492/91, Santu Ram v. State of Rajasthan and others*, ²⁶ wherein, considering the provisions of Section 10A of the Rajasthan Colonization (Allotment of Government Land to Pond Dam Oustees in Rajasthan Canal Colony Area) Rules, 1972 and Rule 23A of the Rajasthan Colonization (Allotment and Sale of Government Land in Rajasthan Canal Area) Rules, 1975, provision for pre-deposit for maintaining a revision/appeal before the Board of Revenue was held unconstitutional. The Division Bench held that such a condition is *per se* arbitrary, unjust and unreasonable as it is contrary to the directive principles of State Policy as envisaged under Article 39-A of the Constitution. It was otherwise a provision of security deposit for maintaining appeal/ revision and having no provision as to what will happen to said security deposit after decision on appeal/revision, therefore, the Division Bench held such provision to be ultra virus, however, we find that judgments of Apex Court on the issue of pre-deposit were not referred and considered.

15. The next judgment referred by the learned counsel for the petitioners is rendered in *Gaurav Gupta and 21 others v. State*, reported in ²⁷ wherein, while considering the same provision as under-challenge, it was held that proviso to sub-section (1) of Section 65 of the Rajasthan Stamp Act is not constitutionally valid, for want of consent of His Excellency the President of India. The Division Bench held thus:-

"9. It appears to us that after Rule 73 of the Rajasthan Stamp Rules requiring deposit of 50% of the recoverable amount as condition precedent for entertaining the revision was struck down by the learned Single Judge of this Court on 15-3-2000, the State Government introduced Rajasthan Finance Act, 2000 which got assent of the Governor on 9-5-2000 and under Section 18 of the said Act, Section 56 (1) of the Stamp Act was amended with the proviso under which no revision application would be maintainable unless and until 50% deposit of recoverable amount is made. It is not in dispute that the said Act

requires consent of not only the Governor of State but also requires assent of his Excellency the President of India, as provided under Article 254 (2) of the Constitution of India. When assent is not given by his Excellency the President of India, then said amendment to Section 56 (1) of the Stamp Act must be held to be *ultra vires*.

10. It is true that right of appeal or revision is creation of statute and there is no reason why the Legislature while granting such right cannot impose conditions for exercise of such right. But, conditions should be reasonable and not arbitrary and it should not be onerous, burdensome or cumbersome to others. If condition is onerous, burdensome or cumbersome then it amounts to unreasonable restrictions rendering the rights of parties almost nugatory. Perhaps, considering these facts only his Excellency the President of India has not given his consent to the Act of 2000.

11. After providing right of appeal or revision to the parties and then curtailing it by imposing such a drastic condition of deposit of 50% of recoverable amount at the time of filing of revision would make the right of a party totally meaningless. If both are so contradictory to each other in the sense that one says 'do' and other says 'don't', then it is impossible to carry out both of them. This exactly has been done by amending Section 56 (1) of the Stamp Act by inserting proviso to it.

12. In view of the above discussions, there is no option for this Court but to hold that amended provision of Section 56 (1) of the Rajasthan Stamp Act whereby condition to deposit 50% of recoverable amount at the time of filing revision has been imposed is *ultra vires* and accordingly the same is struck down from the Statute."

16. According to the learned counsel for the petitioners, the Division Bench specifically held in Para 11 that right of appeal or revision to the parties cannot be curtailed by imposing a drastic condition of deposit of 50% of recoverable amount.

17. In the case of *Bhavya Apparels Private Limited and another v. Union of India and another*, reported in ²⁸ the Hon'ble Apex Court held that while imposing the condition of pre-deposit, the Tribunal is expected to apply its mind in regard to the existence or otherwise of the condition laid down in the Statute. It was urged that the Apex Court has categorically held that a condition imposed may not be such which may for all intent and purport take away a vested right of appeal. Referring to the proviso to subsection (1) of Section 65, it was submitted that condition of pre-deposit is virtually taking away of the right of revision of the petitioners. The judgment rendered in the

case of *State of Rajasthan v. Bhilwara Spinners Ltd. and others*, reported in ²⁹ was also referred. However, a perusal of the said judgment does not show that the same is of any application to the present case.

18. To support the validity of the provisions of proviso to sub-section (1) of Section 65, various judgments of the Apex Court and other High Courts have been cited by the learned Additional Advocate General appearing for State. First, considering the judgment rendered in *Anant Mills Co. Ltd. v. State of Gujarat*, reported in ³⁰ we find that a similar provision was held to be constitutionally valid. The Hon'ble Apex Court held that a condition of pre-deposit is not violative of Article 14 of the Constitution. In para 40 of the said judgment, detailed discussion on the issue was made which is quoted here under :-

"40. After hearing the learned counsel for the parties, we are unable to subscribe to the view taken by the High Court. Section 406 (2) (e) as amended states that no appeal against a ratable value or tax fixed or charged under the Act shall be entertained by the Judge in the case of an appeal against a tax or in the case of an appeal made against a ratable value after a bill for any property tax assessed upon such value has been presented to the appellant, unless the amount claimed from the appellant has been deposited by him with the Commissioner. According to the proviso to the above clause, where in any particular case the Judge is of opinion that the deposit of the amount by the appellant will cause undue hardship to him, the Judge may in his discretion dispense with such deposit or part thereof, either unconditionally or subject to such conditions as he may deem fit. The object of the above provision apparently is to ensure the deposit of the amount claimed from an appellant in case he seeks to file an appeal against a tax or against a ratable value after a bill for any property tax assessed upon such value has been presented to him. Power at the same time is given to the appellate Judge to relieve the appellant from the rigour of the above provision in case the Judge is of the opinion that it would cause undue hardship to the appellant. The requirement about the deposit of the amount claimed as a condition precedent to the entertainment of an appeal which seeks to challenge the imposition or the quantum of that tax, in our opinion, has not the effect of nullifying the right of appeal, especially when we keep in view the fact that discretion is vested in the appellate Judge to dispense with the compliance of the above requirement. All that the statutory provision seeks to do is to regulate the exercise of the right of appeal. The object of the

above provision is to keep in balance the right of appeal, which is conferred upon a person who is aggrieved with the demand of tax made from him, and the right of the Corporation to speedy recovery of the tax. The impugned provision accordingly confers a right of appeal and at the same time prevents the delay in the payment of the tax. We find ourselves unable to accede to the argument that the impugned provision has the effect of creating discrimination as is offensive to the principle of equality enshrined in Article 14 of the Constitution. It is significant that the right of appeal is conferred upon all persons who are aggrieved against the determination of tax or ratable value. The bar created by Section 406 (2) (e) to the entertainment of the appeal by a person who has not deposited the amount of tax due from him and who is not able to show to the appellate Judge that the deposit of the amount would cause him undue hardship arises out of his own omission and default. The above provision, in our opinion, has not the effect of making invidious distinction or creating two classes with the object of meeting out differential treatment to them : it only spells out the consequences flowing from the omission and default of a person who despite the fact that the deposit of the amount found due from him would cause him no hardship, declines of his own volition to deposit that amount. The right of appeal is the creature of a statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appeal. We fail to understand as to why the legislature while granting the right of appeal cannot impose conditions for the exercise of such right. In the absence of any special reasons there appears to be no legal or constitutional impediment to the imposition of such conditions. It is permissible, for example, to prescribe a condition in criminal cases that unless a convicted person is released on bail, he must surrender to custody before his appeal against the sentence of imprisonment would be entertained. Likewise, it is permissible to enact a law that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid. Such a provision was on the statute book in Section 30 of the Indian Income-tax Act, 1922. The proviso to that Section provided that ".....no appeal shall lie against an order under sub-section (1) of Section 46 unless the tax had been paid".

Such conditions merely regulate the exercise of the right of appeal so that the same is not abused by a recalcitrant party and there is no difficulty in the enforcement of the order appealed against in case the appeal is ultimately dismissed. It is open to the legislature to impose an accompanying liability upon

a party upon whom a legal right is conferred or to prescribe conditions for the exercise of the right. Any requirement for the discharge of that liability or the fulfillment of that condition in case the party concerned seeks to avail of the said right is a valid piece of legislation, and we can discern no contravention of Article 14 in it. A disability or disadvantage arising out of the party's own default or omission cannot be taken to be tantamount to the creation of two classes' offensive to Article 14 of the Constitution, especially when that disability or disadvantage operates upon all persons who make the default or omission."

19. The Hon'ble Apex Court, even considered the issue of hardship to the parties which may arise due to a condition of pre-deposit for maintaining the appeal. According to the Apex Court, right of appeal is a creature of Statute and without statutory provisions; such right does not vest in the parties. In the present case, right of revision is given to the persons aggrieved by the order of the Collector with a condition of pre-deposit of 50% of the amount recoverable. Therefore, the ratio decidendi of the judgment rendered by the Apex Court in the Anant Mills' case, AIR 1975 SC 1234 (supra) applies to the present matter also.

20. In the case of *Vijay Prakash D. Mehta and Jawhar D. Mehta v. Collector of Customs (Preventive), Bombay*, reported ³¹ in the Apex Court again considered the validity of a similar provision where condition of pre-deposit was existing. In the said judgment also, it was held that right of appeal is not absolute, thus can be circumscribed by the condition. Considering the provisions of Section 129A and 120E, it was held that right of appeal is neither an absolute right, nor an ingredient of natural justice the principle of which must be followed in all judicial and quasi-judicial adjudication. In paras 9 and 13, it was held thus:

"9. Right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant.

13. It is not the law that adjudication by itself following the rules of natural justice would be violative of any right - constitutional or statutory without any right of appeal, as such. If the statute gives a right to appeal upon certain conditions, it is upon fulfillment of these conditions that the right becomes vested and exercisable to the appellant. The proviso to Section 129E of the Act gives discretion to the Tribunal in cases of undue hardships to condone the

obligation to deposit or to reduce. It is a discretion vested in an obligation to act judicially and properly."

21. The Hon'ble Apex Court held that right of appeal can be circumscribed by the condition, therefore, proviso to sub-section (1) of Section 65 providing condition of pre-deposit of 50% of recoverable amount is not violative of Article 14 of the Constitution. The same view has been taken by a Division Bench of the Rajasthan High Court while deciding *D.B. (Pappu Ram v. The State of Rajasthan and others)* ³² on 8-11-2006, wherein, while considering the provisions of appeal and revision as provided under Section 9A of the Excise Act, the Division Bench held that condition to deposit 75% of the amount determined for maintaining appeal/revision is constitutionally valid. After considering all the judgments of the Apex Court on the subject, similar view has been expressed by other High Courts as cited by the learned Additional Advocate General.

22. The further contention of the learned Additional Advocate General is that the Statute is enacted by the Legislature within its competence and it did not offend any fundamental right guaranteed by Part III of the Constitution and it did not contravene any of its provisions, could not be declared *ultra virus* either on the ground that provision is very vague or uncertain or even ambiguous or even inconsistent unlike the American Constitution. Reference of the judgments rendered in *Nand Lal v. State of Haryana*, reported in ³³ *State of Bihar v. Bihar Distillery Ltd.*, ³⁴ *State of Bihar and others v. Bihar Distillery Ltd. and others*, reported ³⁵ in and *Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh Bhupesh Kumarsheth*, ³⁶ reported in are given to show that in those cases, the Apex Court categorically held that if a provision has been enacted within the Legislative competence of the Government, then it cannot be held to be ultra vires, merely on the ground of hardship or any other consideration, rather Courts should take presumption of its validity, unless it infringed fundamental right of a person or is otherwise in violation of the constitutional provision.

23. Considering the rival submissions on the issue, we find that the judgments in the case of *Mardia Chemicals Ltd.*, AIR 2004 SC 2371 (supra), is not applicable to the present case, inasmuch as the Hon'ble Apex Court, while holding provisions of sub-section (2) of Section 17 of the Act of 2002 to be unconstitutional, considered six aspects narrated in para 64 of the judgment, however, in this case, except ground No. 5 as mentioned in para 64, none of the grounds exists and so far as ground No. 5, mentioned in para 64 is concerned, same narrates that condition to deposit 75% of the

amount cannot be considered to be a meagre amount. However, in view of the judgment of the Apex Court, in the case of Anant Mills, AIR 1975 SC 1234 as well as Vijay Prakash D. Mehta's case, AIR 1988 SC 2010 (supra), it cannot be said that condition to deposit the amount 50% of the recoverable amount can be said to be unconstitutional, more so, when the said condition for maintaining revision is imposed after adjudication of amount by the Collector after hearing the parties, therefore, not only a right of revision is provided after hearing both the parties, but, even after determination of recoverable amount which otherwise is missing in the case of subsection (2) of Section 17 of the Act of 2002. In the case in hand, revisional authority is not approached for the first instance and amount is determined by the Collector prior to filing of revision. The assets or its management is not taken over or remains under the control of the authority, thus person aggrieved can raise the funds, whereas in the case of Section 17 (2) of the Act of 2002, it is missing. Thus, in our view, the judgment of the Apex Court in Mardia Chemicals Ltd. (supra), does not apply to the present case. In the case of *Gaurav Gupta and 21 others v. State of Rajasthan*, reported in³⁷ the Division Bench rendered provision to be unconstitutional, mainly on the ground that the consent of the President was not taken, therefore, the judgment in the case was given on a different issue, though in para 11 it was further held that imposition of condition of pre-deposit is a drastic condition. However, while holding a condition of pre-deposit as drastic condition, the Division Bench had not considered the judgment of the Hon'ble Apex Court, on the same subject, wherein similar provision was not only held to be constitutionally valid, but it was also held that hardship cannot be taken as a ground for deciding any provision to be unconstitutional. Again, in the case of *Santu Ram v. State of Rajasthan and others*, (D. B)³⁸ and other similar cases, the Hon'ble Division Bench had considered the issue regarding a condition of deposition of security amount which otherwise is not a case in hand. Further judgment of the Apex Court in the case of Anant Mills as well as Vijay Prakash D. Mehta were not referred where the Hon'ble Apex Court held similar provisions to be constitutionally valid. Thus, in the light of judgments of the Apex Court, the Division Bench judgment in the case led by *Santu Ram v. State of Rajasthan and others*,³⁹ cannot provide any assistance to the petitioners. So far as other judgments referred by the learned counsel for the petitioners are concerned, same are again either not on the issue or in reference to a discretionary power of the appellate/revisional authority to waive the condition of pre-deposit. Therefore, in none of the judgments referred by the learned counsel for the petitioners, a similar provision has been held to be unconstitutional, more so, when the argument of the learned

counsel for the petitioner that the amount recoverable is not being determined in the present case, is not found to be factually correct, because while deciding the matter by the Collector, recoverable amount is determined and it is only after determination of that amount that any person aggrieved can prefer a revision.

Thus, not only that similar provisions have been held to be constitutionally valid by the Apex Court, but even referring to the other judgments, we hold that the enactment of the proviso to sub-section (1) of Section 65 of the Act of 1998 is within the legislative competence of the Government and is otherwise not violative of fundamental right of the parties as guaranteed under Chapter III of the Constitution. Hence, the proviso to sub-section (1) of Section 65 is held constitutionally valid.

24. The learned counsel for the petitioners further urged that stamp duty is a direct tax where a provision of pre-deposit as comprised in other taxing provision pertains to indirect taxes and, even in those provisions, the revisional/appellate authority is given discretion to waive or relax the condition of pre-deposit, while no such provision has been enacted in the present Act conferring any discretion to waive or relax the condition of pre-deposit, specifically when it is a matter of direct tax. To support this argument, a judgment rendered in *Royal Insulation (P) Ltd. v. Commercial Tax Officer, Manali Assessment Circle, Chennai* ⁴⁰ is being referred, where considering the similar provision, it was held that in all the Tax Statutes, where the provision of pre-deposit exists, invariably the provision for waiver of pre-deposit is provided. Therefore, the Division Bench recommended to the State Government to issue an Ordinance forthwith amending Section 31 of the Tamil Nadu General Sales Tax Act, 1959. The rival submission of the learned counsel appearing for the State Government is that the condition of pre-deposit in a matter of direct tax or indirect tax does not make any difference and it is not necessary to provide a provision for waiver while providing a condition for pre-deposit. Supporting his argument, learned counsel for the non-petitioner submitted that while considering similar provision, Hon'ble Apex Court held condition of pre-deposit to be constitutionally valid. In our view also, merely for the reason that stamp duty can be considered to be a direct tax, it cannot be said that condition of pre-deposit can be held to be unconstitutional. However, almost in all Tax Statutes, where a condition for pre-deposit is provided, invariably the power to waive such a condition is given to the appellate authority which otherwise not existing in the proviso to Section 65 (1) of the Act, 1998. Experiences show that frivolous litigation being carried in hierarchy by recalcitrant litigant is not rare, but at the same time imposition of, or fixing of, outrageously extravagant liability can also be said to be not

very very rare. In these circumstances to strike an appropriate balance, we are of the view that the State Government would have stood well advised to have made appropriate provision for relaxation, or waiver of the condition of pre- deposit, which power may have been prescribed to be exercised by the revisional authority depending on genuineness of the grievance of the revisionists, or by circumscribing even by stringent parameters. However, since no such provision has been made, though we do not find the provision to be *ultra virus* to the Constitution on this ground, still we feel constraint to observe, and recommend that the State Government may suitably amend the provisions of Section 65 (1) of the Act so as to provide a provision for waiver or relaxation in the condition of pre-deposit as provided under the proviso to Section 65 (1) of the Act, for an appropriate case, where revisional authority may give relaxation or extend the benefit of waiver to in the condition of pre-deposit, for the reasons to be recorded.

25. In the result, proviso to sub-section (1) of Section 65 is held constitutionally valid, thus all D. B. Civil Writ Petitions fail on this ground. Accordingly, the writ petitions are disposed of as D. B. Civil Writ Petitions.

26. The Registry may register them as S. B. Civil Writ Petitions again separately. The provisions of proviso to Section 65 (1) of the Rajasthan Stamp Act, 1998 is held to be *intra vires* and valid. The matters are directed to be placed before the concerned Single Bench. The concerned Single Bench will obviously consider, as to whether in the facts and circumstances of the present case, he would like to entertain the writ petitions, or not, in view of the availability of alternative remedy of revision.

Order accordingly.

Cases Referred.

1. (2004) 4 SCC 311: (AIR 2004 SC 2371)
2. AIR 1976 SC 1545
3. 2007 (11) JT (SC) 253: (2007 AIR SCW 6192)
4. 2001 (2) WLC (Raj) 201
5. (2006) 147 STC 246 (Mad)
6. Civil Writ Petition No. 6492/91, decided on 4-4-1994 (reported in AIR 1994 Rajasthan 213)
7. 2001 (2) RLR 311: (AIR 2001 Rajasthan 184).
8. AIR 1984 SC 1543
9. AIR 1980 SC 2097

10. AIR 1997 SC 1511
11. AIR 2001 SC 724
12. (2003) 11 SCC 614: (AIR 2003 SC 4506)
13. AIR 1988 SC 2010
14. AIR 1975 SC 1234
15. 2004 (3) WLC 31
16. Civil Writ Petition No. 5873/2006, decided on 8-11-2006
17. 1995 (98) STC 274
18. 1991 (81) STC 291
19. (AIR 1976 SC 1545)
20. (2004) 4 SCC 311: (AIR 2004 SC 2371)
21. (1975) 2 SCC 175: AIR 1975 SC 1234
22. 1980 Supp. SCC 574: AIR 1980 SC 2097
23. (1993) 1 SCC 22: AIR 1992 SC 2279
24. (1974) 2 SCC 393: AIR 1974 SC 1126
25. (1980) Supp SCC 574: AIR 1980 SC 2097
26. decided on 4th April, 1994, reported in AIR 1994 Raj 213
27. 2001 (2) WLC (Raj) 201
28. 2007 (11) JT SC 253: 2007 AIR SCW 6192
29. 2001 (2) RLR 311: AIR 2001 Raj 184
30. AIR 1975 SC 1234
31. AIR 1988 SC 2010
32. Civil Writ Petition No. 5873/2006
33. AIR 1980 SC 2097
34. AIR 1997 SC 1511
35. 1997 (2) SCC 453
36. AIR 1984 SC 154
37. 2001 (2) WLC 201
38. Civil Writ Petition No. 6492/91) reported in AIR 1994 Raj 213
39. (DBCWP No. 6492/91)
40. (2006) 147 STC 246