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SUPREME COURT ON IMPOSITION OF PENALTY ON DEFICIT STAMP DUTY

1. Case Facts:

- a. In the case of *Trustees of H.C. Dhanda Trust v. State of Madhya Pradesh and Ors.*,¹ the Collector of Stamps, Indore, imposed penalty of Rs. 12.8 crore (*i.e.*, ten times of deficit stamp duty) on a Deed of Assent executed between a private trust and its beneficiaries.
- b. The penalty was imposed under Section 40(1)(b)² of the Indian Stamps Act, 1899 (“**Act**”) on the ground that stamp duty paid was deficient and the parties did not mention the nature of the document so as to evade actual stamp duty payable.
- c. Order passed by the Collector was upheld by the Board of Revenue, Madhya Pradesh as well as the High Court of Madhya Pradesh. An appeal was preferred by the aggrieved party before the Supreme Court (“**SC**”).

2. Decision and Reasoning by SC:

- a. Application of ten times penalty stipulated under Section 40(1)(b) of the Act is neither automatic nor can be mechanically imposed.
- b. The purpose of imposing penalty is to instil fear of the consequences of its breach and not to inflict vengeance. Therefore, imposition of maximum penalty cannot be awarded at mere evasion of duty payable.
- c. The reasons such as fraud; deceit with an intention to deprive the revenue; undue enrichment, *etc.*, are the relevant factors to be considered to arrive at a decision as to what should be the extent of penalty under Section 40(1)(b).
- d. SC then reduced the penalty payable to half of that ordered by the Collector, *i.e.*, Rs. 6.4 crore.

¹ MANU/SC/0694/2020.

² **Section 40 - Collectors power to stamp instruments impounded**

(1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under section 38; sub-section (2), not being an instrument chargeable [with a duty not exceeding ten naye paise only or a bill of exchange or promissory note, he shall adopt the following procedure:-

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:

Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

CONCLUSION

SC has upheld the objective of imposing penalty and that the penalty for insufficient stamp duty (*i.e.*, ten times) cannot be mechanically imposed in every circumstance. Whenever a statute transfers discretion to an authority, it must be exercised in furtherance of objects of the enactment and based upon rationality in a fair manner.

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