

NANAYAKKARA
V
UNIVERSITY OF PERADENIYA

COURT OF APPEAL

S.N. SILVA, J. &

ISMAIL J.

C.A. No. 149/90; D.C. KANDY 16792/MR

JANUARY 21, 1991

Stamp duty - Stamp duty on affidavit - Stamp Duty Act No. 43 of 1982, S.5(1)

Held:

Any instrument or document imposed with stamp duty under section 2 of the Stamp Duty Act No 43 of 1982 will nevertheless be exempt from the payment of stamp duty if it comes within the ambit of section 5. Section 5 exempts two categories of affidavits from the payment of stamp duty. They are:

1. Affidavits made on the request of a public officer.
2. Affidavits made in compliance with any requirement imposed by any written law.

An affidavit filed with an application for leave to appeal is one filed in compliance with a requirement imposed by written law - s. 756(2) Civil Procedure Code. Hence it is exempt from stamp duty.

A necessary corollary of applying the rule of strict construction to determine liability under a taxing statute is that any provision granting an exemption from such liability be given its full effect.

Cases referred to:

1. *Cape Brandy Syndicate v. I.R.C.* 1921 KB 64, 71
2. *Volanka Ltd. v. Attorney-General* (1984) 1 Sri 210, 211
3. *Ameen and others v. Malship (Ceylon Ltd.)* (1982) 2 Sri LR 406, 407
3. *Bempy Appuhamy and others v. Peter Ranasinghe and others* 79 (2) NLR 142

APPLICATION for exemption of stamp duty on affidavit filed with application for leave to appeal.

Kithsiri Gunaratne with *Miss. S.M. Senaratne* for petitioner.

Asoka de Silva, D.S.G. with *K. Siripavan*, S.S.C. as *amicus*.

15th March, 1991

S.N. Silva J.

The Plaintiff-Appellant, filed this application for leave to appeal, against an order made by the learned District Judge rejecting the objections raised on his behalf, in respect of certain issues suggested by Counsel for the Defendant. When it was supported for notice on 5.11.1990, learned Counsel for the Plaintiff-Appellant conceded that the application was time barred and did not wish to pursue the application. However, learned Counsel submitted that the Registrar had charged a stamp duty on the affidavit filed with the application contrary to the provisions of the Stamp Duty Act No. 43 of 1982. It was submitted that the stamp duty was paid under protest and Counsel moved for a ruling on the objection tendered to the Registrar by letter dated 22.10.1991 of the registered Attorney. The Registrar reported that the affidavit was a document chargeable with stamp duty and His Lordship the President directed that this question be decided by the same bench that heard the application for leave to appeal.

Since the question involves a matter of public revenue we decided to request the assistance of the Hon'ble Attorney General at the hearing. Accordingly learned Deputy Solicitor General appeared at the hearing on 21.01.1991 and also tendered written submissions.

The stamp duty charged on the document filed in this case is set out in the endorsement dated 22.10.1990 made by the Registrar. According to that endorsement a total duty of Rs. 2,400/- was charged including a sum of Rs. 600/- for the affidavit. Learned Counsel for the Plaintiff-Appellant submitted that although an affidavit is a document filed in a legal proceeding as defined in the Stamp Duty Act it is specifically exempted from the payment of stamp duty by section 5(1) of the Act. Learned Deputy Solicitor General submitted that the exemption contained in section 5(1) does not apply to affidavits filed in legal proceedings. That, exemptions with regard to documents filed in legal proceedings are specifically contained in section 5(14).

The Stamp Duty Act No: 43 of 1982 came into operation on 1.1.1983. The Stamp Ordinance No. 22 of 1909 was applicable for the period anterior to the said date of operation. Section 2 of the Act imposes a charge of stamp duty on four classes or categories of instruments and documents. In terms of this section read with section 69, the Minister is empowered to prescribe the applicable rate or rates of duty by

Regulation. Under the Stamp Ordinance the scheme was somewhat different. The Ordinance itself contained an elaborate schedule which not only grouped instruments and documents into certain classes but also specified each type of instrument and document and the applicable rate of duty.

Section 5 of the Act specifies the particular instruments and documents that are exempt from the payment of stamp duty. It is significant that whilst the imposition of the charge is on classes and categories, exemptions are of specific instruments and documents. Furthermore, the exemptions are not from the charge but from the payment of stamp duty unlike under the Ordinance (proviso to section 2) where the exemptions were from the charge itself. The resulting position is that any instrument or document imposed with stamp duty under section 2 will nevertheless be exempt from the payment of stamp duty if it comes within the ambit of section 5.

The relevant provisions, imposing a charge of stamp duty on documents presented or filed in civil and admiralty proceedings contained in section 2 of the Stamp Duty Act are as follows:

"2. There shall be charged on -

(a) . . .

(b) Every document presented or filed, in civil proceedings instituted in the Supreme Court or the Court of Appeal or a District Court or in admiralty proceedings instituted in the High Court:

(c) . . .

(d) . . .

a stamp duty at the prescribed rate. Different rates may be prescribed in respect of different classes or categories of instruments."

The word 'document' is defined in section 71 as follows:

"document" in relation to legal proceedings in any court includes an appointment of attorney, plaint, answer, replication or other pleading, petition, application, affidavit, appointment, summons, judgement, decree, order of any description, award, writ, warrant, inventory, account, mandate, bond or recognizance;"

The rates of duty are prescribed in the Regulations made by the Minister and published in Government Gazette No. 224/3 dated 20.12.1982. The relevant portion of this Regulation is as follows:

"Document filed in civil proceedings instituted in the Supreme Court or in the Court of Appeal or in the High Court when exercising admiralty jurisdiction .

For every Rs. 1,000 or part thereof the value of . . . the proceedings.

Subject to a maximum duty of Rs. 1,5000 on each document chargeable with duty".

It is seen that the word 'document' includes an affidavit. Hence, any affidavit presented or filed in civil or admiralty proceedings in the Supreme Court, Court of Appeal, High Court or District Court will ordinarily be charged with the prescribed rate of duty.

Section 5(1) which exempts certain affidavits and affirmations, from the payment of stamp duty, is as follows:

"5. The following instruments and documents shall be exempt from the payment of stamp duty:-

- (1) affidavit or affirmation made on the request of any public officer or in compliance with any requirement imposed by any written law".

Section 5(14) exempts seven categories of "documents filed in legal proceedings" (set out in paragraphs (a) to (g), from the payment of stamp duty. The affidavit filed by the petitioner with his application for leave to appeal does not come within any of these categories. The submission of learned Deputy Solicitor General is that, a document filed in a legal proceeding and charged with stamp duty under section 2, will be exempt from the payment of duty only if it comes within any of the categories specified in section 5(14). That, there is a distinction between affidavits referred to in section 5(1) and documents filed in legal proceedings referred to in sections 2(b) and 5(14).

This submission places an undue emphasis on the arrangement of paragraphs in section 5. The section is intended to exempt certain

instruments and documents from the payment of stamp duty. These instruments and documents are grouped into 14 paragraphs. However, this arrangement into groups does not have the effect of casting the instruments and documents exempt from stamp duty into watertight compartments. Paragraph (14) is not intended to exclusively deal with documents filed in legal proceedings. It is plainly not so. Paragraph (4) exempts a "bail bond in criminal proceedings" from stamp duty. Indeed, a bail bond in a "criminal proceedings" is nothing but a specific description of a document filed in a "legal proceeding". Therefore the arrangement of instruments and documents into groups is certainly lacking in precision. A simple scrutiny also reveals that several exemptions contained in section 5 are redundant. For instance, section 5(14) (a) exempts documents filed in the Magistrate's Court, Primary Court and for the purposes of criminal proceedings in any other court, from the payment of stamp duty. The matter of granting an exemption for these documents does not arise because they are not in the first instance charged with stamp duty under section 2. For the same reason the provision of section 5(4) referred to above regarding a bail bond in criminal proceedings is also redundant. Thus, the manner in which the documents are grouped in section 5 is not a useful guide to the interpretation of its provisions. The mere fact that section 5(14) opens with the words ". . . documents filed in legal proceedings" does not lead to an inference that a document exempt from the payment of stamp duty under any other paragraph will cease to have that exemption if it is filed in legal proceedings.

The Stamp Duty Act imposes a pecuniary burden on the people. Therefore it is subject to the rule of strict construction. (Maxwell on Interpretation of Statutes, 12th Edition page 256). In the case of *Cape Brandy Syndicate vs. I.R.C.*⁽¹⁾ Rowlatt J stated as follows:

"In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used".

This dicta has been followed in other cases and is also cited by Maxwell.

In the case of *Volanka Ltd. vs. Attorney General* ⁽²⁾ this Court applied a restrictive interpretation to the words "every document presented or

filed in civil proceedings . . ." appearing in section 2(b) of the Stamp Duty Act. It was held by H.A.G. de Silva J that these words do not apply to "documents made by the Court itself in performance of its functions and duties in a particular civil proceeding" (at page 214). In the case of *Ameen and others vs. Malship (Ceylon) Ltd.*⁽³⁾ the Supreme Court applied the rule of strict construction in construing the provisions of subhead A of Part II of the Schedule of the Stamp Ordinance. It was held that applications for leave to appeal and notices of appeal are not charged with stamp duty under the Ordinance. Soza J. observed as follows:

"The levy of stamp duty is governed by the letter of the law and not by its spirit. In construing a taxing statute one cannot bend its plain language to suit that which the Legislature may have contemplated or intended. To do so would be to cross the Rubicon which divides the province of the Judge from that of the Legislature" (at pages 486 and 487).

A necessary corollary of applying the rule of strict construction to determine liability under a taxing statute, is that any provision granting an exemption from such liability be given its full effect. Exemptions are provided for by the Legislature for the purpose of giving a measure of relief to a person who would otherwise be liable to tax under the general rule. Therefore no restriction should be placed on such provisions by way of interpretation so as to defeat the purpose of granting such exemption. In the case of *Bempy Appuhamy and others vs. Peter Ranasinghe and others*,⁽⁴⁾ the Supreme Court applied such a standard of interpretation to section 75(1) of the Partition Act No. 16 of 1981. The section provided as follows:

"All pleadings and processes and all documents filed or produced in a partition action under this Act shall be exempt from stamp duty".

It was held by the Supreme Court that the exemption extends to papers filed in an application by way of revision filed against an interlocutory decree in a Partition Action. Samarakoon C.J. said "if one looks at the intention of the Legislature it is clear that it intended all matters connected with partition proceedings to be exempt from stamp duty" (at page 144).

Section 5(1) of the Stamp Duty Act exempts two categories of affidavits from the payment of stamp duty. They are:

- (i) affidavits made on the request of a public officer,
- (ii) affidavits made in compliance with any requirement imposed by any written law.

It is seen that the criteria upon which the exemption is granted is the purpose of making the particular affidavit. In category (i) the purpose of making the affidavit is to meet the request of a public officer. In category (ii) the purpose is to meet the requirement imposed by written law. Since the exemption is granted on the basis of these specified purposes, the exemption should apply not only to the stage at which the affidavit is made but also to the stage when it is used for the stated purposes. Thus an affidavit made at the request of a public officer will be exempt from duty at the stage it is presented to that public officer. Similarly an affidavit made in compliance with any requirement imposed by any written law will be exempt from duty at the stage it is presented or filed in compliance with such written law.

The submission of learned Deputy Solicitor General is that the exemption in section 5(1) will not apply to affidavits filed in legal proceedings. This submission would be tenable only if the words "other than in legal proceedings" are introduced at the end of section 5(1). Such an exercise is clearly not warranted for the reasons stated above. On the other hand, it has to be borne in mind that the requirement to make affidavits is imposed by written law mainly in relation to legal proceedings. It is seldom if any that there will be a similar requirement in relation to matters that do not constitute a legal proceeding. Certainly the legislature did not intend the exemption to apply only to these rare instances. Thus the interpretation contended for will negate the very purpose for which the exemption has been introduced. Further, it appears that the draftsman has included this exemption in section 5(1) in order to include all the exemptions in relation to affidavits in one paragraph. The arrangement will not in any way lend itself to the construction that affidavits exempted by section 5(1) will nevertheless be deprived of that exemption when filed in legal proceedings. For these reasons the submission of learned Deputy Solicitor General is not acceptable.

Section 756(2) provides that every application for leave to appeal shall be by petition and "be supported by an affidavit. There are similar provisions in the Civil Procedure Code and in the Supreme Court Rules, where a party to a legal proceeding is required to file an affidavit. The

petitioner has made the affidavit in question, in compliance with the requirement imposed on him by section 756 (2) of the Civil Procedure Code. Therefore I hold that the provisions of section 5(1) of the Stamp Duty Act apply in relation to this affidavit and it is exempt from stamp duty at the time it was made and at the time it was filed in the proceedings of this case. The sum of Rs. 600/- referred to above has therefore been illegally recovered and the Petitioner is entitled to have this sum refunded to him.

ISMAIL, J. - I agree.

Stamp duty held not leviable
