



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9140 OF 2018

Qwik Supply Chain Pvt Ltd & Anr. .. Petitioners
Versus
 Chief Controlling Revenue Authority & Ors. .. Respondents

**WITH
WRIT PETITION NO. 10255 OF 2018**

Qwick Supply Chain Pvt Ltd & Anr. .. Petitioners
Versus
 Chief Controlling Revenue Authority & Ors. .. Respondents

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- Mr. Vikramaditya Deshmukh a/w Mr. Ketan Dave & Mr. Gaurav Gangal i/by A.S. Dayal & Associates, Advocates for Petitioners
 - Ms. Aloka Nadkarni, AGP for Respondents - State.
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CORAM : MILIND N. JADHAV, J.

Reserved on : August 13, 2025.

Pronounced on : September 3, 2025.

JUDGMENT:

1. Heard Mr. Deshmukh learned Advocate for Petitioners and Ms. Nadkarni learned AGP for Respondents - State.

2. This is a group of two Writ Petitions. Both Writ Petitions challenge twin impugned orders dated 07.03.2015 and 08.02.2018 passed by Respondent No.1 - Chief Controlling Revenue Authority whereby two Applications filed by Petitioners under Section 47(c)(5) of the Maharashtra Stamp Act, 1958 (for short '**the said Act**') seeking refund of Stamp Duty came to be rejected.

3. In Writ Petition No. 9140 of 2018 refund of Stamp Duty of

Rs. 17,50,000/- and in Writ Petition No.10255 of 2018 refund of Stamp Duty of Rs.42,50,000/- paid by Petitioners are the subject matter. Impugned orders are appended at page Nos.24 and 32 of the Petitions.

4. Since the factual matrix in both Writ Petitions is substantially similar save and except, the two flat numbers and the quantum of Stamp Duty involved, both Writ Petitions are disposed of by this common order.

5. Briefly stated, in October 2010, Petitioner No.1 - Company formerly known as New Empire Millennium Investments and Trading Pvt. Ltd. as 'Purchaser' proposed to enter into Deed of Transfer with Kalpesh Navinchandra Daftary, Sangitaa P. Parekh and Sunkkalp Creation Pvt. Ltd. as 'Vendors' / 'Transferors' for transfer of flat admeasuring 2000 sq.ft. in Ashok Nagar Co-operative Housing Society Ltd. building 'Sonbar' situated at North - South Road No.10, Vile Parle (West), JVPD Scheme, Mumbai for total consideration of Rs.3,50,00,000/-.

5.1. In another transaction, Petitioner No.1 - Company formerly known as New Empire Millennium Investments and Trading Pvt. Ltd. as 'Purchasers' proposed to enter into a second Deed of Transfer with same Vendors / Transferors in respect of 45% undivided share in the leasehold rights in Plot No.13 land admeasuring 836.10 square

metres, one flat admeasuring 1650 square feet, four open car parking spaces in the compound and five (5) fully paid-up shares of Rs.100/- each in Ashok Nagar Co-operative Housing Society Ltd. building 'Sonbar' situated at North - South Road No.10, Vile Parle (West), JVPD Scheme, Mumbai situated at Plot No.13, CTS No.775 of Village Juhu forming a part of a larger Plot No.4/2 bearing Survey No.70 of Village Juhu for a total consideration of Rs.8,50,00,000/-.

5.2. Both aforesaid Deeds of Transfer were undated though duly signed by parties. On 14.10.2010 New Empire Millennium Investments and Trading Pvt. Ltd. paid Stamp Duty of Rs.17,50,000/- and Rs.42,50,000/- respectively on the above two Deeds of Transfer. However owing to disputes and differences between parties transfers did not fructify and both unregistered Deeds of Transfer failed its intended purpose. Neither consideration of the amount of Rs.3.50 crores was exchanged nor there was any transfer or handing over of possession of said flats / land.

5.3. On 13.04.2011, New Empire Millennium Investments and Trading Pvt. Ltd. filed two Applications for refund of Stamp Duty i.e. Rs.17,50,000/- and Rs.42,50,000/- paid on the two Deeds of Transfer. By letters dated 22.04.2013 and 24.12.2013, Collector sought various details and particulars from Petitioners to process the refund claim.

5.4. On 01.08.2014, New Empire Millennium Investments and

Trading Pvt. Ltd. submitted Affidavit-cum-Indemnity Bond in lieu of execution of a formal Cancellation Deed.

5.5. In the interregnum, by order dated 21.11.2014 of the National Company Law Tribunal, New Empire Millennium Investments and Trading Pvt. Ltd. stood amalgamated into Reliance Petro Distribution Pvt. Ltd.

5.6. By order dated 07.03.2015, Respondent No.1 rejected both Applications for refund under Section 52A(2) of the said Act on the ground that Reliance Petro Distribution Pvt. Ltd had failed to furnish a duly executed Deed of Cancellation.

5.7. Being aggrieved, Reliance Petro Distribution Pvt. Ltd preferred two Appeals under Section 53(1A) of the said Act before Respondent No.1.

5.8. During pendency of the Appeal, by order dated 09.11.2017 of the National Company Law Tribunal, Reliance Petro Distribution Pvt. Ltd was further amalgamated into Fine Tech Corporation Pvt. Ltd.

5.9. By order dated 08.02.2018, Respondent No.1 dismissed both the Appeals on the ground that they were not maintainable as the impugned order sought to be challenged had been passed by the same Authority in its administrative capacity and was thus barred by Section 52A(3) of the said Act.

5.10. Hence, the present Writ Petitions.

5.11. On 16.04.2020, Registrar of Companies issued a fresh Certificate of Incorporation recording the change of name of Fine Tech Corporation Pvt. Ltd. to Qwik Supply Chain Pvt. Ltd. Consequently, by order dated 04.07.2024 passed by this Court in Interim Application No.11064 of 2024 and Interim Application No.11087 of 2024 the name of Fine Tech Corporation Pvt. Ltd. was allowed to be substituted / amended as Qwik Supply Chain Pvt. Ltd.

6. Mr. Deshmukh, learned Advocate appearing for Petitioners in both Writ Petitions would submit that Respondent No.1 erred in rejecting the Refund Applications as well as Appeals preferred against the said rejection. He would submit that it is admitted position on record that both proposed Deeds of Transfer though executed by parties were undated, they remained unregistered and were never acted upon, consideration was not paid by New Empire Millennium Investments and Trading Pvt. Ltd. to proposed Vendors therein nor possession of subject properties was handed over. Hence, there was no “transfer of property” under Section 5 of the Transfer of Property Act, 1882. Thus both transactions failed to reach its intended object, and consequently, the Stamp Duty paid thereon cannot be retained by the State.

6.1. He would submit that Petitioners submitted all necessary documentary evidence in support of Refund Applications as contemplated under Rule 21 of the said Act. He would submit that in furtherance of their claim, three (3) Affidavits of Directors of New Empire Millennium Investments and Trading Pvt. Ltd. were submitted, one of which was an Affidavit-cum-Indemnity Bond which specifically recorded the reason for non-submission of a formal Deed of Cancellation due to non-cooperation and refusal of the proposed Vendors to join execution of the Cancellation Deed.

6.2. He would submit that insistence of the Authority upon production of a duly executed Deed of Cancellation, despite the admitted fact that the transactions never fructified is a mere empty formality. He would submit that the true object of Section 47(c)(5) of the said Act is to prevent unjust enrichment of the State in cases where a stamped instrument fails at inception and does not culminate into conveyance. He would submit that Petitioners complied with Rule 21 of the Maharashtra Stamp Rules, 1939, by filing necessary Affidavits and Indemnity Bond to explain absence of Cancellation Deed due to non-cooperation by the proposed Vendors. He would submit that power to call for documents cannot be exercised arbitrarily so as to defeat the substantive rights of parties. He would submit that Stamp Duty being a fiscal imposition can only be retained strictly in accordance with law and once it is established that no consideration

was paid and no transfer took place, the State cannot withhold such Stamp Duty on such hypertechnical grounds.

6.3. In support of his above submissions he has referred to and relied upon the decisions of the Supreme Court and this Court in the case of *(1) Bano Saiyed Parwaz Vs. Chief Controlling Revenue Authority and Inspector General of Registration and Controller of Stamps and Others*¹; *(2) Sanman Trade Impex Pvt. Ltd. Vs. State of Maharashtra*² ; and *(3) M/s. Manohar Enterprises and Ors Vs. State of Maharashtra and Ors.*³

6.4. He would submit that the impugned orders dated 07.03.2015 and 08.02.2018 suffer from procedural irregularity, violation of principles of natural justice and complete non-application of mind and are fully covered by the recent decision of this Court in the case of *M/s. Manohar Enterprises & Ors. (3rd Supra)*. He would therefore persuade the Court to set aside the twin impugned orders.

7. **PER CONTRA**, Ms. Nadkarni, learned AGP for Respondents – State would support the impugned orders passed by Respondent No.1 and would submit that both orders are passed in accordance with law. She has drawn my attention to the twin Affidavits-in-reply filed by the Collector of Stamps in both cases separately, viz; by Mr. Pandurang Shripate Magdum dated 22.04.2022 appended at page No.269 in WP

¹ (2025) 2 SCC 201

² (2005) 1 Mah LJ 1037

³ Writ Petition No.11614 of 2016; decided on 07.08.2025

No. 10255/2018 and by Mr. Krishna Jadhav dated 02.08.2024 appended at page No.260 in WP No. 9140/2018.

7.1. She would submit that in the present case Deed of Transfer was duly executed by all parties in October 2010. Hence the contention that transaction was not completed is untenable.

7.2. She would submit that Section 47(c)(5) of the said Act permits refund of Stamp Duty only when it is clearly established that the instrument has not been acted upon and has been effectively cancelled. She would submit that this can only be demonstrated by execution of a registered Deed of Cancellation. However in the present case, despite sufficient opportunity being granted to Petitioners they failed to produce the Cancellation Deed and therefore their claim could not be granted.

7.3. She would submit that mere filing of Affidavits or an Indemnity Bond cannot substitute the Deed of Cancellation. She would submit that Cancellation Deed serves as a safeguard for both the State and parties concerned thereby ensuring that the same instrument is not misused or given effect to at a later stage by the parties if left as it is. She would submit that Cancellation Deed is therefore not a mere formality but a necessary safeguard.

7.4. She would submit that onus lies squarely on the Petitioners to demonstrate compliance with statutory requirements. She would submit that it is settled law that right to refund is a statutory right however it can only be allowed subject to certain restrictions. Hence, she would submit that since Petitioners failed to discharge this burden the said Applications were rejected.

7.5. She would submit that the Affidavit-cum-Indemnity Bond relied upon by Petitioners is an unilateral document signed only by one side. However a Deed of Cancellation would require participation of both parties, so that there is no dispute in future. She would submit that the Authority is therefore justified in treating the instrument as valid and subsisting.

7.6. With regard to the Appeal, she would submit that the second impugned order has rightly held it to be not maintainable as under the scheme of the said Act an Appeal cannot lie before the same Authority against its own order. She would also submit that Respondent No.1 while acting in its Administrative capacity has to grant refund in the strict sense and therefore action under Section 52A(3) not being quasi-judicial in nature, the right of hearing does not arise. Therefore the plea of violation of principles of natural justice cannot be accepted.

7.7. She would submit that the impugned orders are passed in accordance with law and they be upheld.

8. I have heard Mr. Deshmukh learned Advocate for Petitioners and Ms. Nadkarni learned AGP for Respondents and perused the record of the case. Submissions made by both the learned Advocates at the bar have received due consideration of the Court.

9. At the outset, it is seen that both the proposed Deeds of Transfer though executed by parties were undated and unregistered. No consideration was paid by New Empire Millennium Investments and Trading Pvt. Ltd. to the proposed Vendors and possession of the properties remained with the Vendors as can be seen from the averments in the twin Affidavit-cum-Indemnity Bonds dated 01.08.2014 submitted by Petitioners appended at page Nos. 136 and 144 of the Petitions. Thus the transactions therefore never fructified and failed at inception. Accordingly, the Petitioners' case squarely falls within the ambit of Section 47(c)(5) of the said Act

10. With regard to the Refund Application, it is seen that Petitioners produced all relevant documents including the three affidavits of its directors. It is seen that one of these was an Affidavit-cum-Indemnity Bond which clearly recorded that a Deed of Cancellation could not be executed due to non-cooperation of the Vendors. Hence, in my opinion these documents sufficiently safeguarded the revenue and served the very same purpose as a formal Deed of Cancellation. The Petitioners cannot be put to loss and the

State cannot unjustly enrich itself for no fault of the Petitioners.

11. With regard to the rejection of Applications, it is seen that sole reason assigned by the Authority is absence of the Cancellation Deed. In the facts of this case such insistence amounts to a hypertechnical view by the Authority. Section 47(c)(5) of the said Act is enacted to prevent unjust enrichment of the State when a transaction fails at inception.

12. In this regard attention is drawn to the decision of the Supreme Court in the case of *Bano Saiyed Parwaz (1st supra)* which is quoted by the Division Bench of this Court in paragraph No.13 in the case of *Nanji Dana Patel Vs. State of Maharashtra and Ors⁴*. Paragraph No. 13 reads as under:-

"13. The Apex Court in Bano Saiyed Parwad (supra) in paragraph Nos.14 to 17 held as under:-

"14. In Committee-GFIL v. Libra Buildtech Private Limited & Ors., wherein the issue of refund of stamp duty under the same Act was in question, this Court has observed and held inter alia as under:

29. This case reminds us of the observations made by M.C. Chagla, C.J. in Firm Kaluram Sitaram v. Dominion of India [1953 SCC OnLine Bom 39: AIR 1954 Bom 50]. The learned Chief Justice in his distinctive style of writing observed as under in para 19: (Firm Kaluram case, SCC OnLine Bom) "19.... we have often had occasion to say that when the State deals with a citizen it should not ordinarily rely on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent Judges, as an honest person."

We are in respectful agreement with the aforementioned observations, as in our considered opinion these observations apply fully to the case in hand against the

4 Writ Petition No.1897 of 2019 decided on 27.08.2024.

State because except the plea of limitation, the State has no case to defend their action.

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32. In our considered opinion, even if we find that applications for claiming refund of stamp duty amount were rightly dismissed by the SDM on the ground of limitation prescribed under Section 50 of the Act yet keeping in view the settled principle of law that the expiry of period of limitation prescribed under any law may bar the remedy but not the right, the applicants are still held entitled to claim the refund of stamp duty amount on the basis of the grounds mentioned above. In other words, notwithstanding dismissal of the applications on the ground of limitation, we are of the view that the applicants are entitled to claim the refund of stamp duty amount from the State in the light of the grounds mentioned above."

15. The legal position is thus settled in Libra Buildtech (supra) that when the State deals with a citizen it should not ordinarily rely on technicalities, even though such defences may be open to it.

16. We draw weight from the aforesaid judgment and are of the opinion that the case of the appellant is fit for refund of stamp duty in so far as it is settled law that the period of expiry of limitation prescribed under any law may bar the remedy but not the right and the appellant is held entitled to claim the refund of stamp duty amount on the basis of the fact that the appellant has been pursuing her case as per remedies available to her in law and she should not be denied the said refund merely on technicalities as the case of the appellant is a just one wherein she had in bonafide paid the stamp duty for registration but fraud was played on her by the Vendor which led to the cancellation of the conveyance deed.

17. For the foregoing reasons, the appeal is allowed, and we set aside the impugned order dated 02.08.2019 as well as orders of respondent nos.1 and 2 dated 09.06.2015 and 25.02.2016 and direct the State to refund the said stamp duty amount of Rs.25,34,400/- deposited by the appellant."."

13. This Court has concluded that in view of the long standing decision of this Court in the case of ***Kaluram Sitaram v. Dominion of India***⁵ when the State deals with a citizen it should not ordinarily rely on technicalities, and if State is satisfied that the case of the citizen is a just one and even though legal defences may be open to it, the State

⁵ [MANU/MH/0008/1954 : AIR 1954 Bom 50].

must act, as an honest person. The aforesaid observations made by M. C. Chagla, C.J. in the case of *Kaluram Sitaram* (5th supra) having reiterated by the Division Bench of this Court while determining the case of *Nanji Dana Patel* (4th supra) is on identical facts and in identical circumstances as the present case.

14. Here is the case of Petitioners who has invoked statutory rights as available to them under the Stamp Act. The present situation is such that Petitioners paid stamp duty as a bonafide purchaser of properties in view of proposed Deeds of Transfer executed between parties. It is seen that admittedly Transfers did not fructify. The reasons for non-fructification of Transfers are not doubted. It is an admitted position. Certain disputes and issues occurred between parties due to which it was not possible for the Transfers to be fructified between parties. There is nothing untoward observed in the conduct of the Petitioners in making the Applications for refund of Stamp duty thereafter. State cannot insist on Deed of Cancellation especially due to Vendor's reluctance.

15. With regard to the Appeal filed under Section 53(1A) of the said Act, it is seen that the same was decided by the same Authority which had passed the original rejection order. It is pertinent to note that such a course defeats the very object of providing an Appellate remedy and offends the principle of "*Nemo judex in causa sua*" as the

procedure adopted is contrary to fairness in adjudication and renders the order dated 08.02.2018 unsustainable.

16. It is further seen that the above facts are undisputed and entire evidence is placed on record and considered. In such circumstances, remanding the matter back would only prolong the hardship faced by the Petitioners who have been deprived of their lawful entitlement since 2014. Petitioners have already suffered the non-fructification of their transactions. Hence, I am not inclined to relegate the matter back but to grant the relief in exercise of Writ jurisdiction under Articles 226 and 227 of the Constitution of India. Resultantly, both the Writ Petitions succeed.

17. In view of my above observations and citations referred, the impugned orders dated 07.03.2015 and 08.02.2018 passed by Respondent No.1 which are subject matter of challenge in both Writ Petitions deserve to be interfered with. Both orders are quashed and set aside. State cannot unjustly enrich itself at the cost of its citizens. Failure of the transaction once shown and proven in this case entitles the Applications / Petitioners to refund of stamp duty paid once the transfer fails. Here is a case wherein the Vendors are reluctant to execute the Deed of Cancellation. In the alternate the necessary documentation i.e. personal Affidavits of Directors of the Company alongwith Indemnity Bond having been filed are adequate substitutes

in such circumstances filed the Petitioners. Petitioners have acted bonafidely. Case of Petitioners is a just once wherein they have bonafidely paid the stamp duty with the prospect and hope of fructifying the Transaction, but it did not go through and got shelved. Stamp duty amount is paid for registration of the Conveyance / Sale Deed. The Conveyance Deed was never lodged for registration. Neither the Petitioners are lax in their approach towards seeking refund of stamp duty amount. Refund Applications of the Petitioners for refund of stamp duty stand allowed in accordance with law.

18. In view of the above observations and findings, Respondents are directed to refund the Stamp Duty amount of Rs.17,50,000/- and Rs.42,50,000/- to the Petitioners alongwith simple interest at the rate of 4% from the date of Application for refund within a period of 4 weeks from today.

19. Accordingly, both the Writ Petitions are disposed of in the above terms.

[MILIND N. JADHAV, J.]

Ajay

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