

Madras High Court's Landmark Ruling: Clarifying Stamp Duty on Amalgamation Orders

1. Background

In a recent landmark ruling¹, the Madras High Court delivered a pivotal judgment concerning the classification of court orders sanctioning the schemes of amalgamation. This judgment not only sheds light on the classification of such orders as 'instruments' of 'conveyance' but also addresses critical aspects such as manner of computation of stamp duty on schemes of amalgamation. In this article, we have produced a summary of the judgement and the impact of the same on schemes of amalgamation in Tamil Nadu.

2. Historical context

- Stamp Duty is a subject placed under the State List of the Constitution of India. A few Indian States have implemented their own indigenous Stamp Acts. However, the others have incorporated the Indian Stamp Act, 1899 ('Indian Stamp Act') along with certain state-specific amendments to the same.
- In certain states such as Maharashtra, schemes of amalgamation are treated as "instruments of conveyance" and are required to be stamped accordingly. However, the Indian Stamp Act as applicable to Tamil Nadu did not contain a specific entry in relation to conveyance through a scheme of amalgamation. Therefore, there was an ambiguity on whether the order sanctioning a scheme of amalgamation would have to be stamped in Tamil Nadu.
- A Circular² issued by Inspector General of Registration, Chennai in 2018 clarified that schemes of amalgamation or reconstruction evidence the transfer of property and should be classified under Article 23 of the Indian Stamp Act, 1899, ('Indian Stamp Act') which pertains to 'Conveyance'.
- Subsequently, Government Order³ issued by the Commercial Taxes and Registration (J1) Department in 2019, outlines provisions related to the manner of computation of stamp duty for amalgamation orders. As per the Government Order the stamp duty is calculated at 2% of market value of the immovable property or 0.6% of the aggregate market value of the shares, whichever is higher.
- It is to be noted that the stamp duty rate prescribed under Article 23 of the Indian Stamp Act (as applicable in Tamil Nadu), prior to the aforesaid Government Order, was 5% of the market value of property which is subject to conveyance.
- Again, through another Government Order⁴ issued in 2020, the State of Tamil Nadu made the Government Order issued in 2019 to have retrospective effect from 01.04.1956, such that all the schemes relating to amalgamation shall also become eligible for the stamp duty reduction granted in the earlier Government Order.

¹ Inspector General of Registration vs Ms Serene Estate Private Limited

² Circular No. 49282/P1/2018 on November 20, 2018

³ G.O.(Ms.) No. 29 dated March 1, 2019

⁴ G.O.(Ms.) No.47 dated 19.02.2020

3. Questions answered in the ruling

3.1 Whether the order sanctioning a scheme of amalgamation falls under the definition of "instrument"?

- An instrument typically includes any document, by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.
- The Madras High Court emphasized that the transfer of assets and liabilities takes effect through the court order, which also involves the passing of consideration from the transferee company to the shareholders of the transferor company.
- Therefore, the Madras High Court held that the order sanctioning a scheme of amalgamation, qualifies as an "instrument" under the Indian Stamp Act and the decision aligns with previous judgments, including the judgement pronounced by the Hon'ble Supreme Court in the case of Hindustan Lever⁵.

3.2 Whether the order sanctioning a scheme of amalgamation falls under the definition of "conveyance"?

- As per the Indian Stamp Act, "conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule 1.
- The Madras High Court declared that the scheme of amalgamation is an instrument of conveyance, following the Supreme Court ruling in the case of Hindustan Lever (supra), though the ruling was rendered in the context of Bombay Stamp Act, 1958 wherein conveyance was explicitly defined to include a merger order. The Madras High Court cited the following references from the Supreme Court ruling:
 - The transfer of assets and liabilities takes effect by an order of the court.
 - The words "inter vivos" in the context of Section 394 of the Companies Act would include within their meaning also a transfer between two "juristic persons" or a transfer to which a "juristic person" is one of the parties.
 - Consent or no consent, when the decree or order of the court purports to transfer title in the property, it becomes an instrument.

3.3 Whether levy of stamp duty prescribed through a Government Order is valid?

- Section 9(1) of the Indian Stamp Act provides that the Government may, by rule, or order published in the Official Gazette, reduce or remit, whether prospectively or retrospectively the stamp duty on instruments.
- The Madras High Court held when it is only a question of reduction of stamp duty, it can be by an Order passed in exercise of power under the aforesaid Section 9(1). Since the Government Order issued in 2019 states that it is to reduce the duty chargeable under the Indian Stamp Act, it is well within the state's powers.

3.4 If the levy through a Government Order is valid, whether the mode of computation of stamp duty on market value of shares also valid?

- The Madras High Court observed that the introduction of the stamp duty on 0.6% of the aggregate of the market value of the shares through the Government Order is a new mode of computation which is not found in Article 23 of the Indian Stamp Act. Therefore, the same tantamounts to amending the Article 23, which would require legislative action.
- Therefore, the Madras High Court held that the last sentence of the notification contained in the impugned Government Order i.e., "*or 0.6 percent of the aggregate of the market value of the shares, whichever is higher*" alone is struck down and rest of the notification shall stand valid.

⁵ Hindustan Lever & Anr Vs. State of Maharashtra & Anr (2004) 9 SCC 438

3.5 Whether retrospective application of the Government Order with effect from 01.04.1956 is valid?

- It was observed that at no point from 1st April 1956, the stamp duty was less than 2% on conveyance. Since the Government Order only reduced the stamp duty to 2% of the market value of immovable property, the Madras High Court dictated that it is well within the powers of the state under Section 9(1) of the Indian Stamp Act. Thus, the retrospective applicability per se cannot be termed as illegal.

3.6 Whether stamp duty paid in other States is liable to be taken into account and set off as against the duty payable in Tamil Nadu?

- When presenting a document in Tamil Nadu, the Madras High Court held that the stamp duty must be calculated based on the rates applicable in Tamil Nadu.
- If the duty paid in any other state is higher than what is payable in Tamil Nadu, that higher amount should be considered, and no additional duty is required. However, if the duty paid is less than what is due in Tamil Nadu, the amount already paid should be offset, and the remaining balance must be paid on the order sanctioning the scheme of amalgamation.
- This process ensures that the correct stamp duty amount is paid according to the rates in Tamil Nadu compared to other states, where the document may have been previously registered.

4. Summary

- The Madras High Court held that the an order sanctioning a scheme of amalgamation would be treated as an instrument of conveyance and would be subject to stamp duty on 2% of the market value of the immovable property.
- The Madras High Court struck down the computation of stamp duty at 0.6% on the market value of the shares as prescribed in Government Order issued in 2019 i.e., if no immovable property is involved, stamp duty shall not be applicable for scheme of amalgamation in Tamil Nadu.
- The Madras High Court therefore directed the stamp duty authorities to collect stamp duty by calculating 2% of the market value of immovable properties and refund the excess stamp duty collected to the writ petitioners.
- This ruling marks a significant milestone in the legal landscape surrounding stamp duty on amalgamation orders, facilitating smoother transactions in corporate restructuring and amalgamations.
- Entities which have paid excess duty (either at 5% of the market value of the immovable property or at 0.6% of the market value of shares) can obtain refund from the authorities basis the above judgment by filing a writ petition.

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