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STAMP DUTY ON

SHARE

CERTIFICATES

Introduction:

Indian Stamp Act, 1899 is a fiscal statute by which the Union and State Governments can garner more revenue. In India for every document, not exempted by the Act, executed whether in India by any person or outside India stamp duty has to be paid¹. Moreover, failure to pay stamp duty attracts heavy penalty. Every state has been empowered to make amendments in the parent Act regarding those documents and instruments executed within their jurisdiction, except for those on which Union Government is authorized to levy and collect duty.² However, the problem with this statute is the lack of clarity with regard to several documents on which stamp duty is to be levied which often leads to confusion among executants. To add to the woes of the executants Collector of Stamps, Delhi issued notices to the companies registered in NCT of Delhi. Issue which arose because of such notices is whether it is the place of registered office of the company or the place where Board meeting was held that would determine which State has jurisdiction with regard to levy of Stamp duty. This issue can be resolved only when it can be determined in which place the document (i.e. share certificate) was executed.

Place of Execution:

The place of execution is of utmost importance because as per section 3 of the Stamp Act every

¹ See section 3 of Stamp Duty Act, 1899

² See Entry 91 and Entry 63 of Union List and State List respectively.

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document/instrument chargeable with duty has to be executed. The importance of place of execution can also be determined by the presence of two separate provisions dealing with levy of stamp duty *i.e.* one regarding when place of execution is India³ and other when place outside India⁴.

Therefore it is important to determine the place of execution of share certificate *i.e.* whether it is place of registered office or place where Board meeting is held.

Collector of Stamps, Delhi held that it is the place of registered office of a Company where stamp duty has to be levied because a share certificate is executed only at the registered office where statutory formalities – entering the name of share holder in register and issue of valid certificate- can be completed for following two reasons⁵ –

1. Register of member is kept only at the registered office;
2. No share certificate is complete or valid without affixation of common seal that is kept only at the registered office.

³ Section 17, Stamps Act 1899

⁴ *Id.*, section 18

⁵ Office of Collector of Stamps (Govt. of NCT of Delhi) available at

<http://www.delhi.gov.in/wps/wcm/connect/bfa84580446912658932af0c98399b25/evasion+of+payment0001.pdf?MOD=AJPERES&lmod=-1387190402&CACHEID=bfa84580446912658932af0c98399b25&lmod=-1387190402&CACHEID=bfa84580446912658932af0c98399b25> (last visited 02-06-2015)

Register of members-

It is pertinent to note that the Collector of stamps decided the said matter under Companies Act, 1956. According to new Companies Act of 2013 every company is required to maintain register of member in accordance with the provisions of section 88 of the Act and rules prescribed in Companies (Management and Administration) Rules, 2014. Accordingly a register of members can now be maintained at other places if a special resolution is passed in a general meeting in this regard. Therefore, in cases where a company has been maintaining its register at other places stamp duty cannot be levied by the State government on this ground.

Affixation of common seal-

The latest amendment in Companies Act, 2013 has done away with the mandatory requirement of common seal.⁶ According to this new amendment now a share certificate can be issued “*issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary*”⁷ Therefore, the contention of the Collector of Stamps, Delhi that every company has to issue share certificate under its common seal which is mandatorily kept at its registered company will not hold water once the

⁶ See section 9 and section 46 of the Act as amended in Companies (Amendment) Act, 2015 available at <http://www.prsindia.org/uploads/media/Company/Companies%20Act,%202015.pdf> (last visited 02-06-2015)

⁷ *Id.*, see amendment to section 46.

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amended provisions become law. Moreover, even under Companies Act, 1956 there was no prohibition on shifting of common seal from the registered office to any other office. Therefore, the place of affixation of common seal (if any) would determine the rate of Stamp Duty.

Conclusion:

Following the principles of interpretation of fiscal statutes and above mentioned changes in the companies act, place where the stamp duty is to be levied will be determined on case to case basis, and provisions of Stamp Act should be construed in a manner that would be beneficial to the executants.

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