Article

Maharashtra Stamp law amendment makes financial institutions incriminate themselves

CS Vinita Nair
vinita@vinodkothari.com
Vinod Kothari & Company

Check at: http://india-financing.com/staff-publications.html for more write ups.

Article

In exercise of powers conferred by sub-section (2) of Section 1 of the Maharashtra Tax Laws (Levy and Amendment) Act, 2013, Maharashtra Government vide Notification No. VAT 1515/C.R. 57/Taxation-1 dated 25th April, 2013 made certain amendments in the Maharashtra Stamp Act, 1958 (the Stamp Act) effective from 1st May, 2013.

One of the major amendments has been insertion of Section 30A which requires any Financial Institutions (FIs) to ensure that proper stamp duty is paid on all instruments which creates rights in favor of such instruments.

The amendment goes further to impose liability for not just such instruments executed post the amendment but also such instruments which though were executed before the commencement of this amendment but are effective after this amendment and for such instruments FIs shall impound such instruments before 30th September, 2013

APPLICABILITY

The amendment is applicable to any FIs such as Banks/ NBFCs/ HFCs or alike.

NATURE OF AMENDMENT:

After Section 30 in the Stamp Act a new Section 30A has been inserted to the following effect;

"*30A. Duties payable by financial institution*

(1) Notwithstanding anything contained in Section 30, where any instrument referred to in clauses (a) to (g) of Section 30, is executed on or after the date of commencement of the Maharashtra Tax Laws (Levy and Amendment) Act, 2013, in favor of or by any financial institution such as Bank, Non-Banking Finance Company, Housing Finance Company or alike, which creates any right in favour of any such financial institution, the liability to pay proper stamp duty shall be on such financial institution concerned without affecting their right, if any, to collect it from the other party.

Article

(2) *In respect of any such instrument executed before the date of commencement of the Maharashtra Tax Laws (Levy and Amendment) Act, 2013, and are effective and where proper stamp duty is not paid, then the financial institution shall impound such instrument on or before the 30th September, 2013 and forward the same to the Collector for recovery.*

(3) *Where the financial institution fails to impound such instrument as provided in sub-section (2), then the concerned financial institution shall be liable to pay a penalty equal to the stamp duty payable on such instrument*."

Our Analysis:

The amendment is certainly grossly harsh for the FIs as it not only assigns the responsibility of payment of stamp duty on the FIs but also imposes a penalty equal to the stamp duty payable on such instrument in case of failure to comply with the same. Moreover, the amendment requires the financial institutions to impound, on or before 30th September, 2013 for all such insufficiently stamped instruments which were executed before 1st May, 2013 and are effective as on date.

Oxford Dictionary "**impound**" means to take legal or formal possession.

As per Section 33 of the Stamp Act, Every person having by law or consent of parties authority to receive evidence and every person in charge of Public office, except an officer of police or any other officer, empowered by law to investigate offences under any law for the time being in force, before whom any instrument chargeable with Stamp duty is produced or comes in the performance of his functions, shall if it appears to him that instruments is not duly stamped, impound the same, irrespective whether the instrument is not valid in law.

Proviso to Section 33 of the Stamp Act states that a) any Magistrate or Judge of Criminal Court shall not be deemed to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than proceeding under Chapter IX (order for maintenance of wives, children and Parents) or Part D of Chapter X (Disputes as to immovable property) and b) a Judge of a High Court may delegate the duty of examining and impounding any instrument under the Section to such officer as the Court may appoint in this behalf.

It is clear that the power to impound a document is with the authority specified in the Section. Also impounding can only be done at a time when the instrument is produced or comes in the performance of the function of the authority. Hence it does not fit in the rationale for a stamp act amendment to require the FI on suo moto to go for impounding of the document, which under the Act itself is not permissible and it can only be done when produced before the empowered authority.

In view of the above-mentioned, the executor of an instrument itself being expected to impound what is not duly stamped is like imposing self incrimination

CONCLUSION:

This amendment with retrospective effect will surely not be well received by the FIs. Impounding by FIs for inadequate stamp duty paid on instruments executed prior to 1st May, 2013 and effective as on date will be cumbersome. This is surely a draconian amendment requiring the party who is the offender to impound for the instrument not properly stamped on or before 30th September, 2013.

For our other articles on NBFC, click https://india-financing.com/staff-publications-nbfc.html

For our other write-ups and analysis on SEBI related issues, you can please click: http://www.india-financing.com/sebi.html

For our other write-ups on issues related to corporate laws, you can please click: http://www.india-financing.com/staff-publications-corporate-law.html