

judgment it was further submitted that the instrument has to be produced voluntarily.

I have examined all such judgments and find force in the submissions made by the parties in so far as the judgments relied by the parties concerned and I am bound to pay due regard to the same. However, it is admitted fact that all the above said parties have chosen a device to avoid payment of duty causing substantial loss of public revenue. As a matter of fact in their various official records including their financial statement available in public domain vide respective web sites/MCA portal the portion of immoveable property demised to them by DIAL have been shown as asset/lease property. All such documents are available in the public domain which cannot be disputed at this stage when show cause notice was issued. Even in the inaugural Address by GMR Infrastructure Ltd. which is part of JVC/Consortium having constituted DIAL, proudly through its Chairman, it was addressed vide financial statement, to the share-holders that the company has lease out plots for commercial property development at IGIA reiterating therein that DIAL received 60 bids for the development of the hospitality district in its AERO-City Project by which the new integrated terminal-3 at IGIA was developed. It is an admitted fact that different part, of demised premises were handed over by DIAL for the purpose of construction, development and further management. It was fairly conceded by the counsel of the parties that the possession of the demised premises was handed over to them for the purpose of construction, development and further management where different facilities have been developed like hotel, hospitality and other similar facilities, though orally it is argued that they are merely licensee and not lessee. It is trite law that when the possession is handed over of any



*Handwritten signature/initials.*



demised land/premises it is a lease/sub-lease and cannot be termed as license. It is also settled law that it is the substance of the instruments which will be guiding factor to determine as to whether it is the license or lease. The form of an instrument is absolutely irrelevant. Therefore even if an instrument is styled as license, if in substance it satisfy the conditions of a lease, it is lease and not license. Once the possession is admitted that the demise premises has been handed over by the lessor to the lessee or by the lessee to the sub-lessee, prima facie the condition of lease is satisfied and the instrument is chargeable to stamp duty as per schedule-1A of the Act. Any other device to avoid the payment of duty either by styling it as license without producing the instruments or taking refuge under colourable exercise would tantamount to evading intentionally payment of duty to the government. It is surprising to note that DIAL despite notice did not even care to respond to the notice.

It is argued by the counsel appearing for the contesting parties that the Revenue Authority/Collector of Stamp has no jurisdiction to enter into a roving enquiry and has to confine or wait till the original instrument is produced before him in the course of his official functions. Reliance was placed in support of their contention to the various judgments cited during the course of the submission and argument. However, it is clarified that issuing the show cause notice when apparently and prima facie duty has been evaded by the parties concerned and enquiring further that too in accordance with their own submission cannot tantamount to roving enquiry. It is not that any coercive measure ever taken by the Revenue Authority/Collector of Stamp. Adjudication of chargeability of stamp duty based upon facts undisputed cannot be termed as an enquiry or roving enquiry. As such,





under the given facts and circumstances, Revenue Authority cannot and should not be a mute spectator. Under section 48 of the Stamp Act it is the duty of the collector to recover all duties penalties etc. The expression "required to be paid under chapter ....." needs to be interpreted purposively. Under the law the taxing authority is entitled and rather bound to determine the true legal relation resulting from a transaction. In case any device is designed by a party to conceal such legal relationship i.e. the instrument in question, it is open to the taxing authority to unravel and determine the true character of legal relationship. In a case where a device has been created to avoid tax, judicial accord may not be available to approve the same. However, as my hands are bound in view of the judgment cited, in my consider opinion this is a fit case to refer the issue under section 56 of the Stamp Act to the Chief Controlling Revenue Authority i.e. the Divisional Commissioner, NCT of Delhi who is competent to refer this issue to the High Court of Delhi under section 57 of the Act.

**Finding on issue no.(ii) :**

I have to some extent dealt with this issue while deliberating issue no.1. At the cost of repetition, I reiterate that even though none of the parties produced original instrument showing legal relationship executed by DIAL in favour of the sub-lessee/licensees, as per the OMDA between AAI and DIAL, the lessee i.e. DIAL is entitled to sub-lease the demise premises for the purpose of construction, development and management. On the basis of that right, DIAL further assigned/part with the demise premises through public auction/bid to various other entities as enumerated in the memo of parties. Their respective balance-sheets as available in the public domain including the portal of Ministry of Corporate Affairs clearly shows the demised premises as



assets/properties under the head 'lease'. This further find support by the inaugural address by the Chairman of GMR Infrastructure to its shareholder admitting therein that DIAL has leased the demise premises to various entities for the purpose of construction development and further management as part of development of project Aero-City i.e. IGIA including terminal-3 of the said airport. Once it is admitted that the possession has been handed over/assigned to the sub-lessee, it cannot be termed as a mere license as tried to be projected by the counsel for the parties. Had it been so, they would have produced the documents itself to discharge their onus. It is settled law that if a party failed to produce the best piece of evidence or documents, adverse inference can be drawn against them. It can therefore safely concluded that the legal relationship between the DIAL and other entities is that of lessee and sub-lessee and not a mere licensor or licensee and hence stamp duty chargeable as a lease under the Stamp Act which has not been paid deliberately and intentionally. It is argued by the counsel appearing for the contesting parties, that the relationship between the DIAL and Developers is merely that of licensee. Reference was made to the provisions of Transfer of Property Act and Indian Stamp Act defining license. I am of this considered opinion that for the purpose of examining the chargeability of any instrument regard should be had to the Act governing chargeability i.e. the Indian Stamp Act. The term lease has been defined under section 2(16) relevant part of which is reproduced :-

' "Lease" means a lease of immoveable property, and includes also -

(a) a patta,





- (b) a *kabuliyat*, or other undertaking in writing, not being a counter part of a lease, to cultivate, occupy, or pay, or deliver rent for immoveable property
- (c) .....
- (d) .....

In view of the specific provision, for the purpose of chargeability of stamp duty what is required is an instrument/undertaking in writing to occupy immoveable property. It is admitted fact that DIAL has handed over exclusively different sites in the Delhi Airport City to developers for the purpose of construction, development, management and to operate the same as hotel/hospitality facilities without reserving any control or management of all such developed assets. The developers are free to fix the charges in respect of such facilities without any intervention either from DIAL or from Airport Authority of India. The tenure of such occupation of respective lands is for a period of 30 years which is further extendable to a further period of 30 years at the option of the developers in case the OMDA between DIAL and Airport Authority of India is extended. Even in case of determination of agreement with the developers either by efflux of time or earlier, the developers are entitled to the cost of assets developed by them on such land. The details of amount of consideration distinctly for every year is also fixed in the agreement vide Annexure-B for a period 2009 – 2036 at the first instance and thereafter from 2037 – 2066 alongwith escalated formula mentioned therein. I do not therefore find any substance sustainable in the eyes of law that the developers are merely licensee and not lessee. The instrument in writing executed between the DIAL and developers is chargeable to stamp duty under entry 35 of schedule -1A.



In view of the conduct of the parties exhibiting colourable exercise and a device to avoid its legal obligation of payment of duty, it is a clear case of intentional evasion of duty.

**Finding on issue no.(iii) :**

As I have already given a finding *Supra* that all the parties have devised to avoid payment of stamp duty that too intentionally and deliberately, in view of the fact that the parties despite opportunity failed to produce instrument governing legal relationship with DIAL, or even produced a copy thereof, intention to defraud is writ large on the face of it. By virtue of section 62, an instrument not duly stamped attract criminal prosecution read with section 65. Section 65 in particularly clearly empowers the authority to prosecute any person who device to evade duty upon delivery of property exceeding Rs.20/- in amount or value. Since the show cause notice earlier issued is silent about any such intention of the authority to initiate prosecution, in my considered opinion a show cause notice may be necessary as part of principle of natural justice.

Let a show cause notice therefore be issued to all the parties concerned as to why prosecution under section 62 read with section 65 may not be initiated against all of them including the Principle Officers of the respective companies, CMD, Directors, Authorized Representatives, Companies Secretaries or so as the case may be which exercise shall be dealt with separately and individually, with reference to the respective files.





### CONCLUSION :

As issue no.(i) has been referred to the Division Commissioner who is CCRA also, let the record of the file be sent to his office for further action under section 57 of Stamp Act.

In so far as prosecution under section 62 read with section 65, copies of the relevant records of respective files be prepared for the purpose of reference and for issuing notice and for further necessary action, before the records are sent to the office of CCRA, for action under section 57 of the Stamp Act.

In view of my specific finding as regard colourable device resorted to by DIAL and other entities having developed hotels/hospitality facilities at Delhi Aerocity, and avoided payment of duty to the government causing huge revenue loss, and also their tendency to somersault and to take contradictory plea, let a copy of this order be sent for necessary respective action at to :-

- i) Secretary, Ministry of Civil Aviation, Govt. of India. Rajiv Gandhi Bhawan, Safdarjung Air port, New Delhi-110003.
- ii) Deputy Comptroller and Audit of General, (Commercial Branch), Office of the CAG, 9, Din Dayal Upadhy Marg, New Delhi-110124
- iii) Secretary, Department of Corporate Affairs, Ministry of Corporate Affairs, Shastri Bhawan, New Delhi

  
(Lalit Mohan)  
Collector of Stamps/SDM-II (HQ)  
14/7/2014