



30 A
 Dary No. 14183

Memo No.21-STR-1-2018/
 Chandigarh, dated the

To

The State information Commissioner, Haryana,
 SCO No.70-71 (1st Floor), Sector 8-C, Chandigarh

[Signature]
 27/4/18

Subject: Short levy of Stamp Duty on lease of parking or toll contractos.

V/S Please file
 up on file.
[Signature]
 27/4

3/A

Enclosed please find herewith a copy of lette memo no. 21-STR-1-2018/2443 dated 27.03.2018 for information please.

[Signature]
 Superintendent Stamp & Registration
 for Additional Chief Secretary & Financial Commissioner to
 Govt. Haryana, Revenue & Disaster Management Department

Endst. No. 21-STR-1-2018/2799 Chandigarh, dated the 11/4/18

A copy of lette memo no. 21-STR-1-2018/2443 dated 27.03.2018 forwarded to Shri Harinder Dhingra, D4A/7DLF, Phase 01, Gurugram for information please.

[Signature]
 Superintendent Stamp & Registration
 for Additional Chief Secretary & Financial Commissioner to
 Govt. Haryana, Revenue & Disaster Management Department



Department of Revenue & Disaster Management

(Govt. of Haryana)
New Secretariat Building Haryana, Sector 17,
Chandigarh-160017



Most Immediate

Memo No. 21-STR-1-2018/ 2413
dated 27/3/2018

To

1. All the Administrative Secretaries to Government of Haryana.
2. All Head of Departments in the State.
3. All the Divisional Commissioners in the State.
4. All the Chief Administrators/Managing Directors of all the Boards/ Corporations/ Public Sector Under takings in the State.
5. The Registrar (General), Punjab & Haryana High Court, Chandigarh.
6. All the Deputy Commissioners in the State.
7. All the Sub-Divisional Officers (Civil) in the State.
8. **The Registrar of all the Universities in the State.**
9. All the Sub-Registrars and Joint Sub-Registrars (Registering Authorities of the State).

Subject:- Short levy of Stamp Duty on lease of Parking or toll contracts.

It has been noticed by the State Government that the agreement of parking or toll contracts are being executed by the executants of the agreements without proper stamp duty leviable under Article 35 of Schedule 1-A of the Indian Stamp Act, 1899, thereby causing loss of stamp duty and registration fees to the State Government.

2. An agreement to lease of parking place and toll contracts are covered under the description of lease under Section 2(16) of the Indian Stamp Act, 1899 and chargeable to duty under Article 35 of Schedule 1-A of the *ibid* Act. Thus, State is liable to get stamp duty on the settled amount from the contractors to whom the parking lots/places and tolls have been allotted.

GOVERNMENT OF HARYANA
बेटी बचाओ-बेटी पढ़ाओ



3. Recently, the above matter came up for examination before the State Information Commission, wherein the commission after considering the judgment of the Apex Court in Civil Appeal No.(s) 1894 of 2011 titled as State of Uttarakhand and others Vs. Harpal Singh Rawat dated 17.02.2011 and Civil Appeal No.3695 of 2009 titled as Nasirudddin & another etc. Vs. the State of Uttar Pradesh & others dated 06.12.2017 directed the Additional Chief Secretary to Government, Haryana, Revenue and Disaster Management Department to look into the matter and issue instructions to the registering authorities in the State for its compliance.

4. The matter has been examined in the above context. Accordingly, it is clarified that an agreement to lease of parking place and other toll contracts are covered under the scope of definition of the term "lease", if the lease is from year to year or for any term exceeding one year, or reserving a yearly rent, are compulsory registerable instruments under section 17(1)(d) of the Registration Act, 1908.

In the light of above, an agreement/contract to lease parking place and toll is chargeable for payment of stamp duty as per the rates prescribed in Article 35 of Schedule 1-A of the Indian Stamp Act, 1899 and Registration Fees is chargeable under Article 1-A of appendix-1 of table of registration fee under Section 78 and 79 of the Registration Act, 1908, as "Lease".

These instructions may please be brought to the notice of all concerned for their information and strict compliance in letter and spirit.

Superintendent Stamp & Registration
for Additional Chief Secretary & Financial Commissioner to Govt.,
Haryana, Revenue & Disaster Management Department

STATE INFORMATION COMMISSION, HARYANA
SCO 70-71, SECTOR 8-C, Chandigarh
SHOW CAUSE NOTICE NO. 998 OF 2017 IN APPEAL No. 3950 Of 2017
RIGHT TO INFORMATION ACT – UNDER SECTION– 20 (1)

Relevant facts emerging from the appellant:

Name of the appellant	Shri Harinder Dhingra, D4A/7 DLF, Phase-01, Gurugram. Phone No. 09873929500.
Name of the Respondent	1. SPIO-cum-Estate Officer-II, HUDA, Sector-34, Gurugram. 2. SPIO-cum-cum-Tehsildar, Gurugram.
RTI application filed on	21.10.2016
2 nd appeal decided on	18.07.2017
Show cause notice issued on	21.07.2017
Reply to the show cause notice	21.09.2017
Date of Hearing	20.12.2017 (Camp at Gurugram)
Chief Information Commissioner	Shri Yash Pal Singal
Presence	Sh. Prashant Dhingra on behalf o appellant; Sh. Ram Chander, Assistant O/o Estate Officer-II, HUDA, Gurugram; Sh. Naurang Rai, Tehsildar.

This matter came up for hearing in pursuance of the earlier orders passed on 18.07.2017 in appeal case no. 3950 of 2017. The Commission during hearing noted that the information sought vide RTI application dated 21.10.2016 has not been furnished. The Commission directed the SPIO-cum-Estate Officer-II, HUDA, Gurugram to furnish information to the appellant within two weeks of the receipt of the order and to submit the compliance report latest by 08.09.2017. Prime facie, the Commission held the SPIO-cum-Estate Officer-II, HUDA, Gurugram responsible for the delay in furnishing information to the appellant. It was decided to issue notice to the SPIO-cum-Estate Officer-II, HUDA, Gurugram asking him to show cause as to why penalty in accordance

with Section 20 (1) of the RTI Act, 2005 be not imposed upon him. The respondent SPIO was asked to submit reply by 08.09.2017 and be personally present on 03.10.2017 for hearing.

2. On 03.10.2017, Sh. Prashant Dhingra representative of the appellant was present and acknowledged the receipt of information qua point 1 of the RTI application but agitated that information on point no. 2 has not been furnished by the respondent SPIO. Sh. Suresh Chander, Assistant attended the hearing on behalf of the SPIO-cum-Estate Officer-II, HUDA, Gurugram. He requested that the respondent SPIO be given time to furnish information to the appellant on point 2 of the RTI application. The matter was adjourned to 08.12.2017 and further to 20.12.2017.

3. Sh. Prashant Dhingra, representative of the appellant, placed copies of Judgments of Hon'ble Allahabad High Court in Writ no. 54883 of 2013, Hon'ble Supreme Court decision in Civil Appeal No(s) 1894 of 2011(Arising out of SLP(C) no. 7350 of 2007 and Civil Appeal No. 3695 of 2009 where in it has been held that parking lots leased out fall under the description of lease under Section 2 (16) chargeable to duty under Article 35 of Schedule 1-B of the Indian Stamp Act or it is covered by Article 23 of the Indian Stamp Act. The representative of the appellant hence, emphasized that the office of the respondent is liable to get stamp duty on the settled amount from the contractors to whom the parking lots have been allotted. He requested for the Commission's



direction to the respondent SPIO for furnishing information qua point 2 of the RTI application.

4. Sh. Ram Chander, Assistant represented the SPIO-cum-Estate Officer-II, HUDA, Gurugram. He submitted SPIO's reply dated 19.12.2017 to the show cause notice no. 998 of 2017 which is taken on record. The respondent SPIO submitted that the RTI application was received on 21.11.2016 by his predecessor Sh. Tarun Pawariya, Estate Officer-II, HUDA, Gurugram. Sh. Sanjeev Singla who is now posted as SPIO-cum-Estate Officer-I, HUDA, Gurugram assumed the charge of the post from Sh. Tarun Pawariya on 14.12.2016. Before furnishing information, Sh. Tarun Pawariya, the then SPIO sought assistance of Assistant Parking vide letter dated 28.11.2016. The then SPIO relinquished the charge and the present SPIO assumed as designated SPIO on 17.04.2017. However, information on point 1 of the RTI application could be furnished to the appellant vide letter dated 17.07.2017. Regarding point 2, the Tehsildar, Gurugram was requested vide letter dated 09.02.2017 to intimate the office of the answering respondent whether the document of contract of parking is required to be registered or not. If yes, then indicate the stamp duty to be levied for registration of document as sought by the appellant. The respondent SPIO submitted that reply of Tehsildar is awaited even after issue of reminders dated 04.09.2017 and 27.09.2017. He transferred the show cause notice to the SPIO-cum-Tehsildar with a request to appear before



the Commission with the explanation of delay. The respondent SPIO submitted that the opinion of Assistant District Attorney has been also obtained wherein she opined that contract agreement may be executed on stamp paper. He further submitted that Sh. Dharamvir, Assistant, Sh. Hari Kishan, Assistant and Sh. Suresh Chander, Assistant are the custodian of the record and are responsible for the delay in the instant case.

5. Sh. Naurang Rai, Tehsildar, Gurugram is present and submitted that he is obliged to make registration on the request of buyer of any property by charging registration fee as prescribed by the Government. He is liable to execute the contract on the request of the leasee. So far as execution of parking contract agreements, it is to be decided by the competent authority while leasing out the land for using parking or toll etc.

6. The Commission carefully considered the matter. Records available in the case file have been perused. Averments submitted by both the parties have been noted. Decisions of various Hon'ble Courts including Apex Court supplied by the representative of the appellant have been taken on record. The representative of the appellant is agitated for non-furnishing of information qua point 2 of the RTI application. The Commission noted the submissions of the respondent SPIO and observed that he transferred the show cause notice to the SPIO-cum-Tehsildar, Gurugram without transferring the RTI application



to him under Section 6 (3) of the Act. Hence, the SPIO-cum-Tehsildar, Gurugram cannot be held responsible for the delay in furnishing the information. The Commission observes that the SPIO-cum-Estate Officer-II, HUDA, Gurugram was required to furnish information qua point 2 of the RTI application on the basis of record available in his office which is still awaited.

The Commission after perusing the Judgements provided by the representative of the appellant observed that when the parking or toll is awarded through a contract, the decision of the Apex Court, directs that stamp duty be charged from the contractor on the value of contract within the meaning of Section 2 (16) of the Indian Stamp Act. To implement the decision of the Hon'ble Apex Court, the authority competent i.e. Additional Chief Secretary to Government, Haryana, Revenue and Disaster Management Department is required to look into the matter and issue instruction to the Registration Authorities in the State for its compliance.

7. In view of the above facts, before deciding penal proceedings in this case, following orders are passed:

- (i) The SPIO-cum-Estate Officer-II, HUDA, Gurugram shall furnish cost free information to the appellant qua point 2 of the RTI application on the basis of records of the Public Authority within 2 weeks of the receipt of the order. He shall



submit compliance report so as to reach the Commission's Secretariat latest by 22.01.2018.

- (ii) The penal proceeding of the case shall be heard on **28.02.2018 at 11.00 AM.**
- (iii) The Commission in exercise of the powers conferred in Section 25 (5) of the RTI Act, 2005 recommends that copies of Judgements provided by the appellant be forwarded to the Additional Chief Secretary to Government, Haryana, Revenue and Disaster Management Department, with the request to get it examined and in case stamp duty on the value of parking or toll contracts is to be charged, explicit instructions be issued to the Registration Authorities to avoid any Revenue loss to the State Government. Decision taken in this regard be intimated to the Commission within three months.

Announced. To be communicated.

**Place :Camp at Gurugram
Dated :20.12.2017**


**(Yash Pal Singal)
Chief Information Commissioner,
Haryana.**