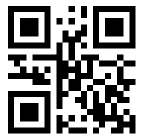

2026:BHC-AS:15339

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3704 OF 2011

ATUL GANESH KULKARNI
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Date: 2026.04.01 12:36:25 +0530

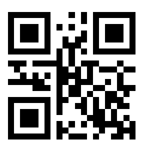
Seco Tools India Private Limited,
a company incorporated under the
Companies Act, 1956, having its
registered office at Gat No.582,
Pune Nagar Road, Koregaon Bhima,
Taluka Shirur, District Pune 412 216 **… Petitioner**

Vs.

1. **State of Maharashtra**,
   through the Principal Secretary,
   Ministry of Revenue & Forest Dept.,
   Mantralaya, Mumbai 400 021
2. **The Joint District Registrar and Collector of Stamps**, Photo Registry Building, Near B.J. Medical Girls Hostel, Pupne – 411 001
3. **The Chief Controlling Revenue Authority & Inspector General of Registration**, New Administrative Building, Ground Floor, Opposite Council Hall, Pune 411 001 **… Respondent**

Mr. Vineet Naik, Senior Advocate with Mr. Raghav Gupta, Ms. Treesa Benny, and Ms. Rashi Savla i/by Wadia Ghandy & Co., for the petitioner.

Mr. O.A. Chandurkar, Additional G.P. with Smt. V.S. Nimbalkar, AGP for respondent Nos.1 to 3-State.



2026:BHC-AS:15339

CORAM : AMIT BORKAR, J.

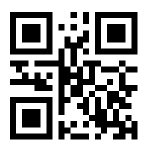
RESERVED ON : MARCH 25, 2026.

PRONOUNCED ON : APRIL 1, 2026

JUDGMENT:

1. By the present writ petition instituted under Articles 226 and 227 of the Constitution of India, the petitioner calls in question the legality and correctness of the adjudication order dated 12 May 2006 passed by respondent No.2, as well as the appellate order dated 16 August 2010 rendered by respondent No.3.

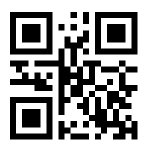
2. The facts giving rise to the present proceedings, as set out by the petitioner, are that one Drillco Seco Limited was a wholly owned subsidiary of the petitioner, with the entire share capital thereof being held by the petitioner and its nominees. It is stated that pursuant to the order of amalgamation dated 11 February 2005 passed by this Court in Company Petition No.942 of 2004 connected with Company Application No.683 of 2004 filed by Drillco Seco Limited, and Company Petition No.943 of 2004 connected with Company Application No.684 of 2004 filed by the petitioner, the scheme of amalgamation and reduction of capital came to be sanctioned. In consequence thereof, Drillco Seco Limited stood amalgamated with the petitioner and all its rights, liabilities and obligations stood vested in the petitioner. In terms of the sanctioned scheme, upon the arrangement becoming effective, the shares held by the petitioner in Drillco Seco Limited, constituting the entire share capital of the said company as reflected in the books of accounts on the appointed date, stood



cancelled. It is further the case of the petitioner that no shares were issued nor any consideration was paid by the petitioner to Drillco Seco Limited or its shareholders under the scheme. The petitioner thereafter executed Form No.21 and filed the same before the office of the Registrar of Companies on 28 March 2005 along with the certified copy of the amalgamation order. It is stated that although the order was dated 11 February 2005 and was signed and sealed on 2 March 2005, an inadvertent error occurred in Form No.21 wherein the date of the order was mentioned as 2 March 2025.

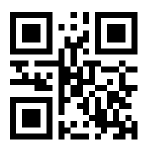
3. It is the contention of the petitioner that under Section 103 of the Companies Act, 1956, the Registrar of Companies is statutorily obliged to register the order and issue a certificate giving effect to the reduction of share capital. However, it is alleged that the office of the Registrar of Companies, Pune has failed to register the said amalgamation order, including the component relating to reduction of capital, on the ground that the petitioner has not furnished proof to establish that no stamp duty is payable on such order under the relevant enactment.

4. The petitioner asserts that, having regard to the nature of the transaction and the scheme sanctioned by this Court, no stamp duty is leviable on the amalgamation order. Nevertheless, in order to comply with the procedural requirements insisted upon by the Registrar of Companies, Pune, the petitioner submitted an application dated 17 August 2005 under Section 31 of the Act before respondent No.2 seeking adjudication and determination of the stamp duty, if any, payable on the said amalgamation order.



5. It is further stated that respondent No.2, by order dated 12 May 2006, adjudicated that stamp duty was payable on the amalgamation order by invoking Article 25(d)(a) of the Act, though the provision was incorrectly referred to therein as Article 25(g)(a). Respondent No.2 proceeded on the basis that the amounts reflected as goodwill and share premium constituted consideration for the purposes of levy of stamp duty under Article 25(a) of the Act. On such premise, respondent No.2 determined that stamp duty at the rate of 3 percent amounting to Rs.79,92,310/- was payable, computed on the valuation of goodwill and share premium. In addition, a penalty at the rate of 2 percent per month, aggregating to Rs.38,36,309/-, was levied for the period commencing from 1 April 2004 till the date of the order, being a period of 24 months. Respondent No.2 also recorded an observation that this Court had directed payment of stamp duty in the amalgamation order, which according to the petitioner is erroneous. Being aggrieved by the said adjudication order, the petitioner preferred an appeal under Section 53(1A) of the Act before respondent No.3. The appellate authority, by order dated 16 August 2010, dismissed the appeal, which order was received by the petitioner on 14 October 2010. It is in these circumstances that the petitioner has approached this Court by way of the present writ petition.

6. Mr. Naik, learned Senior Advocate appearing for the petitioner, submits that respondent Nos.2 and 3 have committed a manifest error in failing to appreciate that Drillco Seco Limited, being the transferor company, was a wholly owned subsidiary of



the petitioner, who is the transferee company, and that the entire shareholding of the transferor company was held by the petitioner itself. He submits that under the sanctioned Scheme of Amalgamation, upon the scheme taking effect, all shares of the transferor company held by the petitioner stood cancelled, no fresh shares were issued in lieu thereof, and no monetary consideration was paid. It is his submission that despite this position, respondent Nos.2 and 3 erroneously proceeded to consider the individual accounting heads such as profit and loss, goodwill and share premium for the purposes of computation of stamp duty. According to him, such approach is contrary to the statutory scheme, inasmuch as the liability to stamp duty under Article 25(da) of the Act arises only in a case where shares are issued or allotted, and even in such case, the levy is confined to the prescribed percentage of the market value of immovable property or of the shares issued or allotted, or the consideration paid, whichever is higher.

7. The learned Senior Advocate further submits that respondent Nos.2 and 3 have failed to take into account that the paid-up equity share capital of the petitioner prior to the amalgamation, amounting to Rs.197,424,980/-, stood reduced to Rs.35,000,000/- in terms of the scheme. It is submitted that the amount so reduced, namely Rs.162,424,980/-, was adjusted against the debit balance in the profit and loss account to the extent of Rs.95,410,328/-, and the remaining balance together with the entire share premium account of Rs.199,000,000/- was adjusted against the goodwill arising upon amalgamation. According to him, these adjustments were in the nature of accounting entries effectuating the scheme

and did not constitute any form of consideration.

8. It is further submitted that respondent Nos.2 and 3 have erred in overlooking that the figures of goodwill and share premium arise solely on account of the accounting treatment prescribed under the Scheme of Amalgamation, and do not represent any real or tangible consideration received by the shareholders of the petitioner. He submits that in the absence of any issuance of shares or payment of monetary consideration under the scheme, no liability to pay stamp duty could arise.

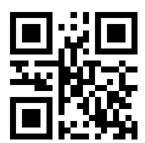
9. The learned Senior Advocate also submits that respondent No.3 has failed to correctly interpret the expression "otherwise" occurring in Article 25(da) of the Act. According to him, the said expression must be understood to mean a case of fresh issuance of shares and not a situation such as the present where no shares are issued at all. He further submits that the appellate order is ex facie unsustainable inasmuch as respondent No.3 has, on the one hand, observed that the relevant value for computation would be the net worth of Drillco Seco Limited, while on the other hand, has proceeded to rely upon figures relating to profit and loss account, goodwill and share premium reflected in the books of the petitioner. It is submitted that such mutually inconsistent findings render the appellate order arbitrary and unsustainable in law.

10. The learned Senior Advocate further submits that the scheme of the Stamp Act contemplates levy of stamp duty in cases of amalgamation on the basis of the market value of shares issued or allotted in exchange or otherwise. He submits that in the present

case, since the petitioner was itself the sole shareholder of the transferor company, no shares were issued or allotted pursuant to the amalgamation. He submits that the reduction of the petitioner's own share capital and the adjustment thereof against its profit and loss account or goodwill are internal accounting measures which have no nexus with the valuation of any shares issued or allotted, since no such allotment has taken place. He submits that the entries relating to share capital and share premium appearing on the liabilities side of the balance sheet, and goodwill reflected on the assets side, merely represent permissible accounting adjustments. According to him, the goodwill has arisen only because the value of the petitioner's investment in the transferor company exceeded the net worth of the transferor, and therefore the same has been reflected as goodwill consequent upon amalgamation. He submits that such goodwill does not represent any real accretion to the assets or net worth of the petitioner, and has in fact been reduced by adjustment against share capital. It is thus contended that such notional goodwill cannot, by any standard, be treated as a benefit or consideration to the shareholders so as to attract levy of stamp duty.

11. In support of the aforesaid submissions, the learned Senior Advocate has placed reliance upon the judgment of this Court in *Bharti Airtel Lilmited vs. the Chief Controlling Revenue Authority & Others,* Writ Petition No.15746 of 2024 decided on 9 May 2025 and the judgment of the Supreme Court in the case of *Mahim Patram (P) Limited vs. Union of India & Others,* (2007) 3 SCC 668.

12. Per contra, Mr. Chandurkar, learned Additional Government



Pleader, submits that a plain reading of the definition of "conveyance" makes it evident that clause (g) of Section 2 expressly includes within its ambit every order passed by this Court under Section 394 of the Companies Act, 1956. He submits that such an order, irrespective of whether it pertains to a subsidiary company or otherwise, partakes the character of a conveyance for the purposes of the stamp law. It is, therefore, his contention that an order sanctioning a scheme of amalgamation under Section 394 is chargeable to stamp duty as a conveyance under the applicable statutory framework. He further submits that the measure and rate of such duty are provided in Article 25(da) of Schedule I to the Stamp Act.

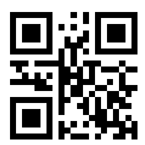
13. Elaborating further, the learned Additional Government Pleader submits that a conjoint reading of Article 25(da), particularly Columns 1 and 2 thereof, indicates that while Column 1 describes the nature of the instrument, Column 2 prescribes the basis and rate for levy of stamp duty. According to him, Column 2 contemplates multiple factors for determining the duty payable, namely, the market value of shares issued or allotted in exchange, the situation where shares are not so issued or allotted and fall within the expression "otherwise", and the amount of consideration paid for such amalgamation. He submits that in the facts of the present case, since there is admittedly no issuance or exchange of shares and no monetary consideration paid, the case would fall within the expression "otherwise" as employed in the said provision.

14. The learned Additional Government Pleader further submits that for the purpose of determining the quantum of stamp duty, respondent No.2 has taken into account the financial components reflected in the books of the petitioner, namely, the amount shown under the profit and loss account of Rs.9,50,14,652/-, goodwill of Rs.6,74,10,328/-, and share premium of Rs.19,90,00,000/-, aggregating in all to Rs.36,14,24,980/-. On this aggregate amount, stamp duty at the prescribed rate of 10 percent under Article 25(da) has been computed.

15. It is his submission that, on such computation, the stamp duty payable works out to Rs.3,61,42,500/-. He submits that the figures adopted by respondent No.3 in the appellate order are directly drawn from the amalgamation order dated 11 February 2005, and therefore the determination of stamp duty is based on the material forming part of the sanctioned scheme itself. According to him, the computation is consistent with the charging provision contained in Article 25(da) of Schedule I read with the definition of "conveyance" under Section 2(g) of the Bombay Stamp Act, 1958, and does not suffer from any legal infirmity.In support of the aforesaid submissions, reliance is placed on the decision of this Court in *J.P. Morgan Securities India Private Limited vs. Chief Controlling Revenue Authority & Others*, 2024 SCC OnLine Bom 3079.

REASONS AND ANALYSIS:

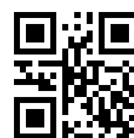
16. I have considered the rival submissions with care. The controversy is a narrow one in form, but it has a wider legal



bearing. The petitioner says that the amalgamation of Drillco Seco Limited with the petitioner was a paper transfer within the family of the same corporate group, with no fresh shares issued and no money paid. The State, on the other hand, says that once the order of amalgamation is passed by this Court under Section 394 of the Companies Act, it answers the description of a conveyance under Section 2(g) of the Bombay Stamp Act and, therefore, duty must follow under Article 25(da). The real dispute is on what basis the stamp duty can be levied in the present facts.

17. For the purpose of adjudicating the issue involved in the present case, it is necessary to first set out the relevant statutory provisions. The dispute between the parties mainly turns on the true meaning and proper application of Section 2(g) and Article 25(da) of the Maharashtra Stamp Act. Therefore, before examining the rival submissions, these provisions are required to be noticed in some detail, as under:

> "**2(g) "Conveyance"** includes,—
>
> i) a conveyance on sale,
>
> (ii) every instrument,
>
> (iii) every decree or final order of any Civil Court,
>
> (iv) every order made by the High Court under section 394 of the Companies Act, 1956 (1 of 1956) or every order made by the National Company Law Tribunal under sections 230 to 234 of the Companies Act, 2013 (18 of 2013) or every confirmation issued by the Central Government under sub-section (3) of section 233 of the Companies Act, 2013 (18 of 2013), in respect of the amalgamation, merger, demerger, arrangement or reconstruction of companies (including



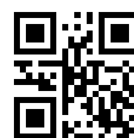
subsidiaries of parent company); and every order of the Reserve Bank of India under section 44A of the Banking Regulation Act, 1949 (10 of 1949) in respect of amalgamation or reconstruction of Banking Companies and every order made by the Board for Industrial and Financial Reconstruction under section 18 or 19 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), in respect of sanction of Scheme specified therein, or every order made by the National Company Law Tribunal under section 31 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in respect of approval of resolution plan;

by which property, whether moveable or immoveable, or any estate or interest in any property is transferred to, or vested in, any other person, inter vivos and which is not otherwise specifically provided for by Schedule I;

Explanation.— An instrument whereby a co-owner of any property transfers his interest to another co-owner of the property and which is not an instrument of partition, shall, for the purposes of this clause, be deemed to be an instrument by which property is transferred inter vivos;

Article 25. CONVEYANCE (not being a transfer charged or exempted under Article 59)—...............

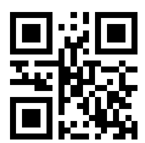
(da) if relating to the order of the High Court under section 394 of the Companies Act, 1956 (1 of 1956) or the order of the National Company Law Tribunal under section 230 to 234 of the Companies Act, 2013 (18 of 2013) or confirmation issued by the Central Government under sub-section (3) of section 233 of the Companies Act, 2013 (18 of 2013) in respect of the amalgamation merger, demerger, arrangement, or reconstruction of companies (including subsidiaries of parent company) or order of the Reserve Bank of India under section 44A of the Banking Regulation Act, 1949 (10 of 1949), in respect of amalgamation or reconstruction of Banking Companies] [and every order



> made by the Board for Industrial and Financial Reconstruction under section 18 or 19 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), in respect of sanction of Scheme specified therein or every order made by the National Company Law Tribunal under section 31 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in respect of approval of resolution plan."

18. The legal scheme must be read carefully. Section 2(g) gives a very wide meaning to the word "conveyance". It is not limited only to a normal sale deed where one person sells property to another. The section clearly says that even an order of this Court under Section 394 of the Companies Act, 1956 can also fall within this definition, if by that order property or any right in property moves from one entity to another. So, in other words, Act is treating even a Court approved amalgamation as a kind of transfer document. The Legislature has itself made it clear that such orders are included. But that does not conclude the issue. After calling it a conveyance, the Court must still see how much duty is actually payable, and that has to be decided strictly as per Article 25(da) and not on general assumptions.

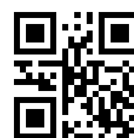
19. Now coming to Article 25(da), this is the main provision which tells how stamp duty is to be calculated in cases of amalgamation. It says that duty is to be calculated on the total of two things. First is the market value of shares which are issued or allotted, whether in exchange or otherwise. Second is the amount of consideration paid for the amalgamation. So, the provision is focusing on real economic elements. It is looking for something which is actually given in return, either shares or money or



something similar which can be valued. It is not intended to pick up every number which appears in the books of accounts. The provisos also show that even after calculating duty, there is a cap, so that the duty does not go beyond a certain limit. This also indicates that the law is concerned with real transaction value, not notional figures created only for accounting purposes.

20. When we look at the facts of the present case, one important thing becomes very clear. Drillco Seco Limited was not an independent outside company. It was fully owned by the petitioner. The petitioner was holding all its shares. After amalgamation, those shares simply got cancelled. No new shares were given. No money was paid. There was no exchange in the ordinary sense. Because Article 25(da) proceeds on the basis that something is issued or something is paid. But here, nothing of that kind has happened. So naturally, the normal way of applying that Article becomes difficult. The very foundation required for applying that provision in its usual manner is missing.

21. The State has attempted to meet the difficulty by placing heavy reliance on the words "or otherwise" appearing in the provision. The submission is that even if no shares are issued or allotted, still the case can be brought within this expression, and thereafter the authority is free to look at figures such as profit and loss, goodwill and share premium for the purpose of computing stamp duty. The words "or otherwise" cannot be lifted out of the sentence and read separately. They are not independent words giving unlimited power. They are part of a larger phrase which speaks about "shares issued or allotted in exchange or otherwise".



So, these words must take their meaning from the context in which they are used. They are connected with the idea of issuance or allotment of shares. They only cover situations where shares may not be issued in direct exchange, but may still be issued in some other manner under the scheme. They do not travel beyond that. If the interpretation suggested by the State is accepted, then the provision will become uncertain. It would mean that even where no shares are issued at all, the authority can pick up any figure from the books and treat it as a basis for levy. That would include internal adjustments, write offs, balancing figures and notional entries. Such an interpretation would make the charging provision open ended. The Court cannot permit such expansion, because taxing provisions must be read strictly and within clear limits.

22. It must also be kept in mind that the Legislature has used specific words like "shares issued or allotted" and "consideration paid". The addition of the words "or otherwise" cannot be used to destroy entire phrase. It can only supplement it in a limited way. If it is read too widely, then the main part of the provision becomes meaningless, which is not permissible in law. Therefore, when properly understood, the expression "or otherwise" cannot be interpreted to include figures like profit and loss, goodwill or share premium which arise only from accounting. These are not instances of shares being issued in another form. They are merely book entries. Accepting the State's view would result in taxing even those cases where there is no real exchange or payment at all, which clearly goes beyond the intention of the Legislature.

23. It is also necessary to properly understand what these accounting entries actually mean. The reduction of share capital, adjustment of losses, and creation of goodwill are accounting steps. They are done to balance the books after amalgamation. They do not show that any real payment was made. They do not show that shareholders received any new benefit. These are internal adjustments. For example, goodwill in this case is not something purchased from outside. It is only a figure which comes because the value of investment was higher than the net worth of the subsidiary. So, it is more of a balancing entry. It does not increase the real wealth of the company. It does not put money in the hands of shareholders. Therefore, it cannot be treated as consideration.

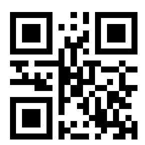
24. If we look at the real nature of the transaction, things become even clearer. The petitioner already owned the entire company. After amalgamation, it continues to own the same business, only the legal structure changes. There is no outsider involved. No third party is paying or receiving anything. It is not a sale. It is not even a commercial exchange. It is a legal merging approved by Court. In such a situation, to calculate stamp duty on the basis of internal accounting entries would be artificial. The law does not say that such internal figures should be treated as market value. Unless the statute clearly directs such method, the Court cannot adopt it.

25. There is much substance in the submission made by the petitioner, and it needs to be understood properly. The respondents have mixed up two different steps which the law keeps separate.

The first step is about chargeability. That means, whether the document at all can be brought under the Stamp Act. On that part, there is not much difficulty. As already seen, an order of amalgamation can fall within the meaning of "conveyance". So to that extent, the law may apply. But that is only the entry point. It does not automatically decide how much duty must be paid.

26. The second step is more important. That is the stage of computation. Here the law becomes strict. The authority cannot act on general ideas or assumptions. It has to follow Article 25(da) as it is written. That provision gives a clear method. It speaks about value of shares issued or allotted, and about consideration paid. So the authority must first find whether such things exist in the facts of the case. Only then it can proceed to calculate duty. This stage cannot be loosely handled. What appears to have happened in the present case is that once the respondents concluded that the amalgamation order is a conveyance, they proceeded further without properly examining the next requirement. They have taken figures from the accounts, like goodwill, share premium and profit and loss, and treated them as if they are consideration. This is where the mistake has come in. Every figure in the balance sheet cannot be treated as consideration. Accounts are prepared for different purposes. They show financial position, adjustments, past losses, and internal balancing. They do not always reflect a payment or exchange between two parties.

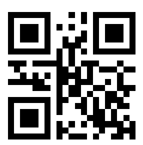
27. The charging provision must be applied carefully. Only those figures can be used which truly answer the description given in the



statute. If there are shares issued, their value can be seen. If there is money paid, that can be counted. But if there is neither, then the authority cannot create a value by picking up accounting entries and calling them consideration. That would be going beyond the law. It would make the provision wider than what the Legislature has written. Therefore, unless the amounts shown in the accounts can clearly be linked to actual issuance of shares or actual payment of consideration, they cannot be used for levying stamp duty. In the present case, such link is missing. The figures relied upon are only internal adjustments. They do not show any real transaction between two separate parties. For this reason, the method adopted by respondent Nos.2 and 3 cannot be sustained.

28. The appellate order also shows confusion in its reasoning. At one place, it says that the value of the transferor company should be considered. At another place, it relies on figures from the books of the petitioner. These two approaches are different and cannot be used together without clear reasoning. If one method is adopted, it must be followed consistently. Changing the basis midway creates uncertainty. It gives an impression that the conclusion is fixed first and reasons are adjusted later.

29. Therefore, when the entire matter is seen in totality, it becomes clear that though the amalgamation order may fall within the definition of conveyance, the method adopted for calculating stamp duty is not in accordance with the statute. The figures of goodwill, share premium and profit and loss account do not represent consideration or value of shares issued. They are only accounting adjustments. Hence, using them for levy of stamp duty



is not legally correct.

30. In view of the foregoing discussion and reasons recorded hereinabove, the following order is passed:

(i) The writ petition is allowed;

(ii) The adjudication order dated 12 May 2006 passed by respondent No.2 and the appellate order dated 16 August 2010 passed by respondent No.3 are hereby quashed and set aside;

(iii) Rule is made absolute in terms prayer clauses (a), (b) and (c);

(iv) There shall be no order as to costs.

(AMIT BORKAR, J.)