

Office of the
Superintendent of Stamps,
Multi-Storeyed, Bldg, 7th floor,
Lal Darwaj, Bhadra, Ahmedabad-1.
Dated the 8th Oct., 1970.

To.

✓ Jaymal Thakore & Co.,
Chartered Accountant
1868/2- Third Floor,
H. Khericha Shop Building,
Gandhi Road, Ahmedabad-1.

Sub:-Opinion regarding stamp duty.

Sir,

With reference to your letter dated 31-8-1970 I am to state that the definition of Power of Attorney given in the Bombay Stamp Act, 1958 excludes the instrument chargeable with a fee under the law relating to Court Fees for the time being in force, under Articles 12 of Schedule II to the Bombay Court Fees Act, 1959, Mukhtarnama or vakalatnama when presented for the conduct of any case to any civil or criminal court other than a District Court or court of session or the High Court or to any Revenue Court, or to any Collector or Magistrate or other executive officer are chargeable with Court Fees.



2/- In Parmanand V/s Setprasad, the Allahabad High Court has held that an instrument authorising the holder who was not a certified Mukhtar or pleader to appear and do all acts necessary for execution of a decree on behalf of another required to be stamped under the stamp Act, and not as vakalatnama under the Court Fees Act. The view taken in this case, was that Article 10 of Schedule II of the Court Fees Act is restricted to documents given to and presented by a duly certified Mukhtars and pleaders under the legal practitioners Act. But this view was dissented from by the Panjab Chief Court in Ganpat V/s Premsinh (202 PIR 1912) where it was held that a power of attorney empowering a person

who was neither a Vakild of a Court nor a certified Mukhtar of a court to represent another in a Civil Court was governed by Article 10 of Schedule II of the Court Fees Act and not by Article 48 of Schedule I of the Stamp Act. It is observed that a Mukhtar is an attorney whether appointed specially or generally certified as a legal practitioner, and a Mukhtarnama is document that empowers a Mukhtar to act for the person by whom or on whose behalf, the document is executed and includes a power of attorney in favour of a person other than a certified Mukhtar.

3/- If the authorities enumerated in Section 71 (1) of the Sales Tax Act and in Section 288 (1) of the Indian Income Tax, 1961, can be equated to any of the authorities enumerated in the second column of Item 12 of the Bombay Court Fee Act, 1959, then there is no doubt that the proper fee to be paid would be by way of Court Fees.

The Sales Tax Officers and the Income Tax Officers are executive officers. The taxing departments are ~~taxing~~ instrumentalities of the state. They are not the legislature, nor are they a part of the judiciary. Their functions are the assessment and collection of taxes, and in the process of assessing taxes, they have to follow a pattern of action which is considered judicial. Their actions in the ultimate analysis must be regarded as executive in nature, since their determinations result in the demand of tax which neither the legislature nor the judicial can correct. Collect.


4/- The authorisation in the form of a power of attorney or Mukhtarnama or Vakalatnama presented before any of the authorities enumerated in Article 12 of Schedule II of the Court Fees Act, 1959 by the persons as authorised in Section 71(1) of the Bombay Sales Tax Act and in Section 288 (1) of the Indian Income Tax, 1961 in any case is chargeable with fee as provided in the Court



Fees Act and not chargeable with duty as provided in Article 48 read with Section 2 (r) of the Bombay Stamp Act, 1958.

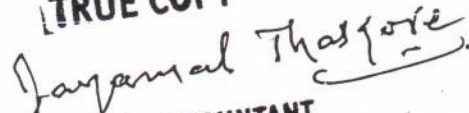
5/- The document presented for adjudication is not chargeable with stamp duty as provided in Article 48 read with Section 2 (r) of the Bombay Stamp Act, 1958.

Yours faithfully,


Asst. Superintendent of Stamps,
Gujarat State,
Ahmedabad.

P.



TRUE COPY

CHARTERED ACCOUNTANT