
(2005) 04 AHC CK 0158

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3497 of 1999

D.S.M. E.P.P. Surlon India Ltd.

APPELLANT

Vs

U.P. State Industrial Development Corporation Ltd. and
Regional Manager, U.P. Industrial Development Corporation
Ltd.

RESPONDENT

Date of Decision : 12-04-2005

Acts Referred:

Citation : (2005) 3 AWC 2556

Hon'ble Judges : R.P. Misra, J;A.P. Sahi, J

Bench : Division Bench

Advocate : K.M. Garg, for the Appellant; R.P.N.L. Srivastava, P.K. Bisaria and
Shesh Kumar, for the Respondent

Final Decision : Disposed Of

Judgement

R.P. Misra and A.P. Sahi, JJ.—The present petition questions the transfer levy imposed on the petitioner vide order dated 19.11.1998 by the respondent - U.P. Industrial Development Corporation on account of transfer of plot No. 54/11 site -4 Sahibabad in favour of the petitioner.

2. Sri K.M. Garg, learned counsel for the petitioner has submitted that the levy is illegal inasmuch as the subject matter of transfer could not be subjected to levy as there was no actual transfer and such a levy is not permissible under the guidelines which have been appended as Annexure-3 to the supplementary affidavit.

3. The second ground of challenge is that, even assuming that the transfer levy can be imposed, it is not in accordance with the guidelines of the respondents themselves inasmuch as the petitioner would be liable to pay the transfer levy only at the rate of 5 percent of the premium and not 10 percent. Sri Garg has referred to para 6.02 of the guidelines in this regard and has further invited the attention of the Court to paragraph 23 of the supplementary affidavit in this

respect.

4. Sri P.K. Bisaria, learned counsel for the respondents, on the other hand, invited the attention of the Court to para 6.01 F of the guidelines wherein the levy can be imposed on transfer where it amounts to disposal of controlling interest of the company or the firm. Sri Bisaria urged that in view of the admitted position that 51 percent of the shares as disclosed by the petitioner himself in paragraph 18 of the supplementary affidavit is that of the company in whose favour shares had been transferred, namely, Quadrant EPP Belgium. There is no room for doubt that the controlling interest of a company stands transferred in favour of another company and, therefore, the levy is fully justified.

5. Having heard learned counsel for the parties, we find that the transfer has admittedly taken place of the shares to the extent of 51 percent in favour of M/s Quadrant EPP Belgium. This position is also admitted to the petitioner. In view of this, there cannot be another opinion that the controlling interest has not been transferred. The argument of Sri Garg that the Directors of the erstwhile company continued to enjoy the rights to manage the company cannot amount to diluting the fact of transfer of shares to the extent of 51 percent in favour of Quadrant EPP Belgium. Sri Garg has further urged that according to Article 93-A of the Articles of Association an ordinary resolution cannot be passed unless 60 percent of the total members present in the meeting vote in favour of the resolution. Sri Garg has urged that in view of this, since the transferee company has only 51 per cent share, therefore, they have no controlling interest. The argument is totally misconceived inasmuch as no resolution can be passed without participation of the company, which has 51 per cent shares. The argument of Sri Garg appears to have been simply stated to be rejected. In view of the aforesaid finding, we hold that the controlling interest was transferred as envisaged under the guidelines and, therefore, the petitioner was rightly subjected to transfer levy.

6. The next question is as to what would be the extent of levy in respect of the transfer made. Sri Garg could not point out any averment in the writ petition in this regard but on the strength of the averments contained in paragraph 23 of the supplementary affidavit has urged that the petitioner is liable to pay only 5 percent and not 10 percent. It will be useful to refer to the application moved by the petitioner on 28.11.1998, which has been appended as Annexure-4 to the writ petition. No such claim was made before the respondents at the time of making a request to waive the levy. This Court, therefore, will not enter into this controversy. But since the guidelines have been produced before us it would be appropriate that the respondents be directed to calculate the amount of levy, which the petitioner claims to be reduced in the circumstances indicated herein above.

7. In view of this, the writ petition is disposed of holding that the petitioner is liable to pay the transfer levy which shall now be recalculated by the respondents keeping in view the guidelines framed in this regard and also the objection of the

petitioner with regard to the extent of levy within a period of three months from the date of presentation of a certified copy of the order before the respondent No. 1. It is further directed that the entire amount as claimed under the order dated 19.11.1998 shall be deposited by the petitioner within a month before the respondent No. 1. In case, the respondent No. 1 passes an order for reducing the amount to be deposited by the petitioner then to that extent refund of the amount shall be made to the petitioner.

8. The writ petition is, accordingly, disposed of with no orders as to costs.