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न्यायालय राजस्व मण्डल, मध्यप्रदेश, ग्वालियर

समक्ष : मनोज गोयल

अध्यक्ष

प्रकरण क्रमांक पीबीआर/निगरानी/धार/स्टांपअधि./2017/6300 विरुद्ध आदेश दिनांक 10.10.2017 तथा 12.10.2017 पारित द्वारा कलेक्टर, ऑफ स्टाम्प, धार, म.प्र. प्रकरण क्रमांक /16-17/धारा 31.

टोरेन्ट फार्मास्युटीकल लिमिटेड

कार्यालय टोरेन्ट हाऊस, आशाराम रोड, अहमदाबाद(गुजरात)

तर्फे अधिकृत हस्ताक्षरकर्ता श्री कलंधर पिता नारायण वामन मुंगी

कार्यालय 810, सेक्टर-3, पीथपुर, जिला धार, म.प्र.

.....आवेदक

विरुद्ध

मध्यप्रदेश शासन द्वारा

कलेक्टर ऑफ स्टाम्प्स, जिला धार

.....अनावेदक

श्री अभिनव धनोदकर, अभिभाषक, आवेदक

श्री हेमंत मुंगी, शासकीय अभिभाषक, अनावेदक

:: आ दे श ::

(आज दिनांक 6/11/19 को पारित)

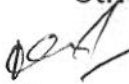
आवेदक द्वारा यह निगरानी भारतीय स्टाम्प अधिनियम, 1899 (जिसे संक्षेप में अधिनियम कहा जायेगा) की धारा 56(4) के अंतर्गत कलेक्टर ऑफ स्टाम्प, जिला धार पारित दिनांक 10.10.2017 तथा 12.10.2017 के विरुद्ध प्रस्तुत की गई है।

2/ प्रकरण के तथ्य संक्षेप में इस प्रकार हैं कि यह प्रकरण निराकरण हेतु टोरेन्ट फार्मास्युटीकल लिमिटेड के द्वारा कलेक्टर ऑफ स्टाम्प, जिला इंदौर के समक्ष प्रस्तुत करने पर कलेक्टर ऑफ स्टाम्प द्वारा प्रकरण मुद्रांक अधिनियम की धारा 31 के तहत दर्ज किया जाकर निराकरण की कार्यवाही प्रारंभ की गई। कलेक्टर ऑफ स्टाम्प द्वारा दिनांक 10.10.2017 को आदेश पारित कर

प्रचलित बाजार मूल्य मार्गदर्शक सिद्धांतों के परिपालन में M/s Zyg pharma Pvt.ltd., से M/s Torrent Pharmaceutical Ltd. को अंतरित सम्पत्ति एवं अंतरित हित के बाजार मूल्य की गणना कर भारतीय मुद्रांक अधिनियम के अनुच्छेद 23 एवं अधिसूचना क्र. (17)बी-4-58-2005-2-पांच दिनांक 13 मार्च 2006 के संदर्भ में उक्त सम्पत्तियों के बाजार मूल्य पर मुद्रांक शुल्क, नगर पालिका शुल्क, पंचायत शुल्क एवं उपकर न्यायनिर्णय हेतु प्रस्तुत स्कीम की कंडिका 1.10(a), 4.3, 4.4 के परीक्षण पश्चात् 2,19,29,168/- मुद्रांक शुल्क निर्धारित किया गया। कलेक्टर ऑफ स्टाम्प के इसी आदेश के विरुद्ध यह निगरानी इस न्यायालय में प्रस्तुत की गई है।

3/ आवेदक के विद्वान अभिभाषक द्वारा तर्क में मुख्य रूप से निम्नलिखित आधार उठाये गये हैं-

- (1) The impugned order has been passed in an illegal and arbitrary manner and also without application of mind.
- (2) The impugned order has been passed in such haste and hurry that it does not clarify the date of passing of order since the dates are mentioned as 10.10.2017 and 12.10.2017 which is a clear example of arbitrariness and high handedness. No opportunity of hearing was granted to the applicant as well as its Counsel at any point in time. It is against the principle of natural justice.
- (3) The industrial land is in ownership of MPAKVN and in view of clause 12 of lease deed dated 07.06.1990 the transferor Company does not have any right to sublet, assign or otherwise transfer the said plot or any part thereof or any building structures of work constructed thereon for any purpose what so ever, without the previous sanction in writing by MPAKVN or any other officer authorized by MPAKVN.

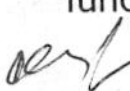



(4) In case of industrial land, MPAKVN shall execute a lease deed or amendment deed in favour of transferee company and by which lease rights shall be transferred to the applicant and that instrument shall be chargeable with stamp duty and registration fees as per the process and guidelines prescribed by the MPAKVN.

(5) The clause 18 (a) (3) of the guidelines issued by MPAKVN in respect of transfer and transfer process clearly states that merger of wholly owned subsidiary company into original operating company (holding company) and merger of original operating company into wholly owned subsidiary company, if the Corporate Identification Number (CIN) is changed then that case will not fall in the category of transfer and in such cases, transfer fees of Rs. 10,000 will be payable and the permission can be granted and the case of the applicant very well falls within the said clause.

It is also worth mentioning here that clause 18(b) of the above mentioned Guidelines will also be applicable to the applicant. It is submitted that the Guidelines of the MPAKVN are applicable for the entire Pithampur Industrial Area.

(6) The guidelines issued under Madhya Pradesh Bazar Muly Margdarshak Sidhant ka banaya jana avam uska purnikshan niyam, 2000 (hereinafter referred as "the Rules 2000") shall not be applicable for ascertaining the market value since MPAKVN functions through its own guidelines for calculation of market



value of industrial land which falls under the ownership of MPAKVN but the non-applicant calculated the market value as per guidelines of the Rules 2000. It is further submitted that Article 38(6) of the Indian Stamp Act will not be applicable to the present case and Ld Collector of stamp has wrongly calculated the stamp duty as per Article 38(6).

(7)The non-applicant has also failed to consider the section 133-A of the Madhya Pradesh Municipal Corporation Act 1956 and section 161 of the Madhya Pradesh Municipalities Act 1961 wherein if any property transferred through sale, gift and usufructuary mortgage, lease then only additional stamp duty is leviable on market value of the property under the section 133-A of the MP Municipal Corporation Act, 1961 and under section 75 of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 and Upkar Adhiniyam shall be applicable to the instrument covered in the above mentioned provision but it has no applicability in present case since it is an amalgamation of two companies under the Companies Act.

Section 133-A of the Madhya Pradesh Municipal Corporation Act, 1956 and section 161 of Madhya Pradesh Municipalities Act 1961 are being reproduced for ready reference of this Hon'ble Court as under:-

**[section 133-A - Power to impose additional stamp duty  
on transfer of immovable property -**

*ord*

*[Signature]*

1. The duty imposed by the Indian Stamp Act 1899 on instrument of sale, gift and usufructuary mortgage respectively, of immovable property, shall in the case of instrument affecting immovable property situated within the limits of any Corporation and executed on or after the date on which the provisions of this Act are made applicable to such limits be increased by [1] per centum on the value of property so situated or in case of an usufructuary mortgage on the amount secured by the instrument, as set forth in the instrument.
2. For the purpose of this section, section 27 of the Indian Stamp Act, 1899 (II of 1899) shall be read as if it specifically required the particulars referred to therein to be set forth separately in respect of -
  - (a) Property situated in the Corporation areas;
  - (b) Property not situated in the Corporation areas;
3. The state Government shall every year pay to each Corporation from the Consolidated Fund of the State a grant-in-aid approximately equal to the extra duty realized under sub-section (1) in respect of the property situated within the area of each such Corporation after making such deductions on account of cost of collections as the State Government may determine.
4. The state Government may make rule for carrying out the purposes of this Section.]



**[Section 161 - Methods of assessment of duty on transfer of immovable property -**

1. The duty imposed by the Indian Stamp Act 1899 on instrument of sale, gift and usufructuary mortgage respectively, of immovable property, shall in the case of instrument affecting immovable property situated within the limits of any municipality and executed on or after the date on which the provisions of this Act came into force within the municipality increased by [1] per centum on the value of property so situated, or in case of an usufructuary mortgage on the amount secured by the instrument, as set forth in the instrument.

Provided that nothing herein shall apply in the case of transfer of property where the value of the property so transferred or in case of a usufructuary mortgage the amount so secured does not exceed two thousand rupees.

2. For the purpose of this section, section 27 of the Indian Stamp Act, 1899 (II of 1899) shall be read as if it specifically required the particulars referred therein to be set forth separately in respect of -

- (a) Property situated in any Municipal areas;
- (b) Property not situated in any Municipal areas;

3. The state Government shall every year pay to each Council from the Consolidated Fund of the state a grant-in-aid

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*[Handwritten signature]*



approximately equal to the extra duty realized under sub-section (1) in respect of the Municipality.

4. The state Government may make rules for carrying out the purposes of this Section.

It is clear from perusal of above mentioned provisions that amalgamation/merger does not fall in the category of instrument as enumerated in above mentioned provisions.

(8) Without prejudice to submission made at clause 6 above, in present case, the date of instrument is 11.02.2016 and at that time municipal corporation duty was 1% of the market value and upkar duty was 2.5% of the stamp duty and if at all these duty are applicable, the same prevailing on the date of the Order of Hon'ble High Court of Gujarat sanctioning the scheme shall apply and not at the rate which is prevailing on the date of order by the non-applicant.

(9) The non-applicant has failed to consider the information submitted vice letter dated 30.03.2016 along with requisite documents for necessary action before the office of Sub-Registrar Dhar and there is no whisper in the whole order in respect of letter dated 30.03.2016.

(10) The applicant is a Pharmaceutical company and a going concern in view of Madhya Pradesh Industrial Policy 2014, Article 25(13), Schedule-1 of the Indian Stamp Act, 1899, is applicable

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*[Handwritten signature]*

but the same has not been considered by the non-applicant while passing the order dated 10.10.2017 (12.10.2017).

(11) The case of the applicant very well falls within the clause 18(a)(3) of the guidelines issued by MPAKVN in respect of transfer and transfer process.

(12) The applicant Company had also applied online for payment of stamp duty and per online calculation amount, the stamp duty payable came to Rs. 41.55 Lacs approx. but the Ld. Collector of Stamp has levied exorbitant amount of stamp duty without considering the schedule, factual and legal position based merely on whims and fancies which is an example of arbitrariness and high handedness on the part of the non-applicant.

(13) As per the Judgment of Hon'ble High Court in the matter of Motilal S Tahalramini V/s State of M.P. & other has held as under:

7. The objection which has been taken by the respondents in the return, para 6 is not applicable for the simple reason that the stamp duty chargeable in the Madhya Pradesh Panchayat Raj Adhiniyam, 1993 has been mentioned but nowhere the stamp duty payable on the assignment has been mentioned and, therefore, I am of the view that Annexure P/5 5 W.P. 4761/2004 dated 30.10.2004 executed by Shri A.K. Agrawal in favour of the present petitioners is an assignment and accordingly the stamp duty is to be levied. Undisputedly, the petitioners have deposited the stamp duty

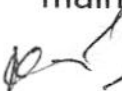




upon the lease deed and thereafter the document has been registered by the Sub-Registrar, therefore, according to me the respondents are bound to pay back the excess amount of stamp duty to the petitioners.

8. Resultantly, this petition succeeds and is hereby allowed. The impugned order annexure P/3 dated 12.04.2004 is hereby set aside and it is hereby held that on the document Annexure P/5 dated 30.10.2004 the stamp duty of assignment is to be levied. Let the excess amount which has been realized by the respondents from the petitioners be returned back to them on or before 21<sup>st</sup> October, 2013, failing which the petitioners shall be entitled to interest @ 6% p.a. from 21.10.2013. (A.K. Shrivastava) Judge rao 6 W.P. 4761/2004 a copy of judgment in the matter of Motilal S Tahalramini V/s State of M.P. & others is filed and marked as Annexure A/13.

(14) the Hon'ble High Court of Chhattisgarh in the matter of **Raymond Limited Vs. State of Chhattisgarh reported in AIR 2004 (Chh) 12** has specifically held in para 27 of said judgment that this Hon'ble Court has the jurisdiction u/s 56(4) of Indian Stamp Act to hear a revision against the order passed by the Ld. Collector u/s 31 & 32 of the Act 1899 which is also applicable in present case hence the present revision filed by the applicant is very well maintainable before this Hon'ble Court.



(15) the Ld. Collector while passing the impugned order has made the calculation of the stamp duty on the basis of assumed market rate without any method, reasons for calculation and randomly calculated the amount.

(16) Ld Collector of Stamp has failed to consider the fact that the duty or taxes will be calculated as on the date of order of Hon'ble High Court (which is dated 11<sup>th</sup> February, 2016) in the matter of scheme of Amalgamation and not on the date of adjudication of the application. It is pertinent to mention here that the original application was also submitted on 30.03.2016.

(17) the market value guidelines for the land for the year 2015-16, 2014-15, 2013-14 issued by the Collectorate Indore, states that the guidelines issued by the MPAKVN shall be applicable with respect to the notified land falling under the purview of MPAKVN.

(18) the impugned order has been served upon the applicant on 16.10.2017 and after the receipt of the impugned order, the applicant is filing present revision which is well within the limitation.

(19) Ld. Collector of Stamp has failed to consider the fact that stamp duty to be calculated as per the prevailing guidelines issued by the State Government and if applicable, at the rate of duty applicable on the date of order passed in scheme of amalgamation. It is submitted that no additional duty can be charged on order dated 11.02.2016 as per the law and applicable guidelines.

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(20) Ld Collector of Stamp has failed to consider the MPAKVN guideline with respect the stamp duty on leasehold land granted by MPAKVN.

(21) the Ld. Collector of Stamp has failed to consider proper mechanism to calculate the valuation of building.

(22) the applicant be permitted to raise other grounds and place reliance on judgments at the time of hearing.

अतः उनके द्वारा निगरानी स्वीकार कर अधीनस्थ न्यायालय का आदेश निरस्त करने का अनुरोध किया गया।

4/ अनावेदक के विद्वान शासकीय अभिभाषक द्वारा मुख्य रूप से तर्क प्रस्तुत किया गया कि अधीनस्थ न्यायालय कलेक्टर ऑफ स्टाम्प द्वारा विधिसंगत आदेश पारित किया गया है, जिसमें हस्तक्षेप का कोई आधार इस निगरानी में नहीं है। अतः उनके द्वारा निगरानी निरस्त करते हुए अधीनस्थ न्यायालय का आदेश स्थिर रखने का अनुरोध किया गया।

5/ उभयपक्ष के विद्वान अधिवक्ता द्वारा प्रस्तुत तर्कों के संदर्भ में अभिलेख का अवलोकन किया गया। कलेक्टर ऑफ स्टाम्प के अभिलेख के अवलोकन से स्पष्ट है कि ZYG pharma private Limited की Authorized share अंतरित संपत्ति 1,30,00,000/- है, इसके अतिरिक्त consideration amount का उल्लेख ही नहीं है, यदि consideration amount और share value अंतरित सम्पत्ति के बाजार मूल्य से अधिक होगी, तो उक्त अधिक value पर मुद्रांक शुल्क देय होगा। यद्यपि माननीय उच्च न्यायालय के आदेशानुसार स्कीम में कोई भी share issue or allotted नहीं किये गये हैं। अतः अंतरित सम्पत्ति का बाजार मूल्य जो कि अधिक है, के आधार पर मुद्रांक शुल्क की गणना कर कलेक्टर ऑफ स्टाम्प द्वारा न्याय निर्णय हेतु प्रस्तुत स्कीम की कंडिका 1.10(a), 4.3, 4.4 के परीक्षण उपरांत रुपये 2,19,29,168/- मुद्रांक शुल्क निर्धारित करने में कोई त्रुटि नहीं की गई है। इस प्रकार कलेक्टर ऑफ स्टाम्प द्वारा पारित आदेश वैधानिक एवं उचित होने से स्थिर रखे जाने योग्य है।

6/ उपरोक्त विवेचना के आधार पर कलेक्टर ऑफ स्टाम्प, जिला धार द्वारा पारित आदेश दिनांक 10.10.2017 एवं 12.10.2017 स्थिर रखे जाते हैं। निगरानी निरस्त की जाती है।

  
(मनोज गोयल)

अध्यक्ष

राजस्व मण्डल, मध्यप्रदेश

ग्वालियर