

(2000) 08 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 2902, 2903 and 2904 of 2000

Ashok Kumar and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-08-2000

Acts Referred:

Income Tax Act, 1961 — Section 2, 206, 206C, 206C(1), 44AC

Citation : (2001) 252 ITR 200

Hon'ble Judges : Nirmal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Rakesh Aggarwal, for the Appellant; R.P. Sawhney Rajesh Bindal and Rupinder Khosla, for the Respondent

Judgement

G.S. Singhvi, J.—The petitioners, who were granted L-14 and L-14A licences by the Excise Department of the State of Punjab for the year 1999- 2000, have prayed for quashing of the notices dated January ,22, 2000, issued by the Assistant Excise and Taxation Commissioner, Ropar (respondent No. 3) for deposit of Income Tax at source u/s 206C of the Income Tax Act, 1961 (for short, "the 1961 Act").

2. The question as to whether holders of L-14 or L-14A licence issued under the Punjab Liquor Licence Rules, 1956, fall within the meaning of the term "buyer" u/ s 206C of the 1961 Act and whether the Excise Department is required to collect 10 per cent, of the licence fee as Income Tax from such licensees is no longer res integra and must be treated as conclusively decided against the Revenue in view of the following decisions of this court :

(i) K.K. Mittal and Co. Vs. Union of India (UOI) and Others, ;

(ii) K.K. Mittal and Co. Vs. Union of India (UOI) and Others, ;

(iii) Satya Pal Amrik Singh and Co. and Others Vs. Union of India (UOI) and Others, ;

(iv) Naresh Kumar and Co. and Others Vs. Union of India (UOI) and Others, decided on February 22, 2000 ; and

(v) C. W. P. No. 681 of 2000--Chander Bhan and Co. v. Union of India [2001] 247 ITR 553, decided on June 2, 2000.

3. In the case of Naresh Kumar and Co. and Others Vs. Union of India (UOI) and Others, a Division Bench analysed Section 206C of the 1961 Act and held that the licensees do not fall within the definition of "buyer" u/s 2. The relevant portion of the judgment dealing with this aspect of the matter is extracted below (page 764) :

"A perusal of the aforesaid provisions makes it clear that every person who sells alcoholic liquor for human consumption other than Indian made foreign liquor is required at the time of debiting the amount payable by the buyer to his account or at the time of receipt of such amount from the buyer in cash or by cheque or draft or by any other mode, to collect from the buyer a sum equal to 10 per cent, of the amount payable by the buyer as Income Tax at source. The word "buyer" has been defined in the Explanation to mean a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table or the right to receive any such goods but does not include a buyer in the further sale of goods obtained in pursuance of such sale. The petitioners before us who are L-14 licensees do obtain country liquor by purchase and on the basis of the licences obtained by them they get the right to receive those goods and are, therefore, covered by the first part of the definition of buyer as given in Clause (a) of the Explanation. There are then three clauses according to which certain classes of persons are excluded from the concept of buyers as defined in Section 206C with the result that persons who fall in any of these three clauses will not be covered by the definition even if they are covered by the first part. A buyer in the further sale of such goods is one of the classes of persons who stand excluded from the definition by virtue of Sub-clause (ii) of Clause (a) of the Explanation being the subsequent buyers. The petitioners before us undoubtedly purchased country liquor from the wholesalers who are L-13 licensees and the latter had purchased the same from the distilleries (manufacturers). The sale in favour of the petitioners is thus a second sale covered by the exclusion Sub-clause (ii) of Clause (a) of the Explanation. In this view of the matter, the petitioners are not buyers within the meaning of Section 206C of the Act. Consequently, respondent No. 4 was not required to collect from them the amount payable under Sub-section (1) of Section 206C of the Act.

It was strenuously contended by Shri Sawhney, on behalf of the Department, that the Explanation talks of two types of buyers, (i) those who purchase goods and deal with them, (ii) those who acquire the right to receive the goods and according to learned counsel the exclusion referred to in Clause (a) of the Explanation refers only to (i), i.e., only those buyers who purchase goods and deal with them and therefore the petitioners who have acquired the right to receive the goods on the basis of the licences issued to them by the Excise

Department are buyers within the meaning of Clause (a) of the Explanation and are not excluded. Learned counsel has placed reliance on a judgment of the Patna High Court in *State of Bihar and Another Vs. Commissioner of Income Tax and Others*. We are unable to accept this contention of learned counsel for the Department. The language of Clause (a) in the Explanation is clear and unambiguous and the exclusions referred to therein do exclude from the main provision, the subsequent purchasers of country liquor. It is not disputed by the Department that the petitioners on the basis of their L-14A licences purchased the country liquor from the whole-salers who are L-13 licensees.

Now coming to the judgment of the Patna High Court in *State of Bihar and Another Vs. Commissioner of Income Tax and Others*. It is true that the State of Bihar was held to be a seller of alcoholic liquor for human consumption within the meaning of Sections 44AC and 206C of the Act as they then stood but, in our opinion, this judgment is of no help to the Department. The provisions of Sections 44AC and 206C of the Act as they then stood were under consideration of the learned judges which provisions are materially different from Section 206C of the Act which is under our consideration. Another Bench of the same High Court in *Ramjee Prasad Sahu and Others Vs. Union of India (UOI) and Others*, considered the provisions of Section 206 of the Act as were introduced by the Finance Act, 1992, with effect from April 1, 1992, and held that 15 per cent, of the excise duty payable by the petitioners therein on account of purchase of country liquor could not be collected as income tax under the provisions of Section 206C of the Act. They referred to their earlier judgment in *State of Bihar and Another Vs. Commissioner of Income Tax and Others*, and observed that the judgment was interpreting the provisions of Sections 44AC and 206C of the Act as they then stood which were materially different. We are in agreement with the view expressed in *Ramjee Prasad Sahu and Others Vs. Union of India (UOI) and Others*.

Before concluding on this aspect, we may also refer to Circular No. 660 (see [1993] 204 ITR 19), dated September 15, 1993, issued by the Central Board of Direct Taxes wherein it has been made clear that the provisions of Sub-section (1) of Section 206C of the Act in relation to a buyer will not apply to a public sector company and to any other buyer who obtains the said goods at a second or subsequent sale of such goods. The Board has clarified that the provisions would apply only at the point of the first sale of such goods. The petitioners who buy country liquor at a second or subsequent sale thus stands excluded. It must, therefore, be held that they are buyers in further sale of those goods and are excluded by Sub-clause (ii) of Clause (a) of the Explanation, the first sale being the sale made by the distilleries (manufacturers) to the wholesalers."

4. The Division Bench then considered the question as to whether L-14A licensees can be treated as "sellers" and answered the same in the negative by making the following observations (page 766) :

"There is yet another aspect of the matter. The Deputy Commissioner of Income

Tax has held that the Excise and Taxation Commissioner who issued L-14A licences to the petitioners in an open auction is the seller within the meaning of Section 206C of the Act and was, therefore, required to collect 10 per cent, of the licence fee as Income Tax at source. We are of the opinion that this view of the Income Tax Department is wholly misconceived and not warranted from the provisions of Section 206C of the Act. A seller is required to collect 10 per cent, of the amount as Income Tax at source only on the sale of goods of the nature specified in column No. 2 of the Table. What the Excise and Taxation Commissioner can be said to have sold to the petitioners are the L-14A licences on the basis of which they can carry on their business of selling country liquor in retail. He has not sold any goods of the nature specified in column No. 2 of the Table. He has not sold country liquor. The licence only gives a right to the petitioner to receive the goods of the nature specified in column No. 2 of the Table and the requirement of Sub-section (1) of Section 206C is that 10 per cent. of the amount payable is to be collected by the seller from the buyer of the goods and not from the buyer of the right to receive the goods. Since no goods have been sold by the Excise and Taxation Commissioner, he cannot be described as a seller within the meaning of the Act."

5. In the final analysis, the Division Bench declared that the licence fee paid by L-14A licensees is not a part of the amount payable at the time of sale of the country liquor and, therefore, the excise authorities cannot recover 10 per cent, of the licence fee in the form of tax. The observations made on this aspect of the case read as under (page 767) :

"We may now examine the matter from another angle as well. Subsection (1) of Section 206C of the Act requires that every seller of alcoholic liquor for human consumption other than Indian made foreign liquor shall collect from the buyer 10 per cent, of the amount payable at the time of debiting the amount to the account of the buyer or at the time of receipt of any such amount in cash or by cheque or draft or by any other mode. It is thus clear that what is collectible is 10 per cent, of the amount payable. The amount payable is that amount which is payable at the time of debiting the amount to the account of the buyer or at the time of receiving money from him in cash or by cheque or by draft or by any other mode for the goods sold to him. That amount, in our opinion, is the purchase price which the buyer pays to the seller for the goods sold and in the cases before us the amount which the petitioners pay to the wholesaler after they have obtained a permit from the Excise Department by depositing the excise duty. The amount payable would only be the price which the buyer will pay to the seller. It cannot by any stretch of reasoning include licence fee which the buyer has to pay for the licence that he has obtained. The payment of this fee is wholly unrelated to the amount to be paid at the time of purchasing country liquor from the wholesalers. Even if an L-14A licensee does not purchase any country liquor, the licence fee has nevertheless to be paid by him to the Department and it will be preposterous to suggest that Income Tax should still be recovered. The licence fee is therefore not a part of the amount payable at the

time of the sale of country liquor. In this view of the matter, we have no hesitation in holding that the amount payable in Section 206C of the Act does not include the licence fee which has to be paid by the licensee to the State Government. The Deputy Commissioner of Income Tax was in error in including the licence fee in the amount payable u/s 206C of the Act and the Excise and Taxation Commissioner was not required to collect 10 per cent, of the licence fee from the L-14A licensees like the petitioners and it follows that the petitioners were not liable to deposit that amount."

6. Respondents Nos. 1 and 2 have filed short written statements to contest the maintainability of the writ petitions on the ground that the orders of assessment (annexure R-1) dated December 8, 1999, passed by the Income Tax Officer, Rupnagar, have not been challenged by the petitioners, but after hearing learned counsel for the parties, we are convinced that the petitioners cannot be denied relief on the ground that they have not challenged the orders of assessment passed against respondent No. 3. As far as they are concerned, a declaration by the court that no tax can be collected from them at source u/s 206C of the 1961 Act would be sufficient and if respondent No. 3 feels aggrieved by the orders of assessment, he may challenge the same by filing appeal under the Act or by availing of other appropriate legal remedy.

7. Hence, the writ petitions are allowed. Notices annexure P-1 are declared illegal and quashed.