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**(2000) 06 P&H CK 0008**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No's. 678 to 683, 1115, 1807, 1862, 1864 and 2905 of 2000

Chander Bhan and Co.

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 02-06-2000

**Acts Referred:**

Income Tax Act, 1961 — Section 206C

**Citation :** (2000) 163 CTR 236 : (2001) 247 ITR 553 : (2000) 126 PLR 631 : (2000) 112 TAXMAN 517

**Hon'ble Judges :** N.K. Sud, J;N.K. Sodhi, J

**Bench :** Division Bench

**Advocate :** Mohan Jain and Rakesh Aggarwal, for the Appellant; R.P. Sawhney, M.L. Sareen, Rajesh Bindal and N.K. Joshi, for the Respondent

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**Judgement**

N.K. Sodhi, J.—Question which arise for our consideration in this bunch of eleven writ petitions 678 to 683, 1115, 1807, 1862, 1864 and 2905 of 2000 already stand answered in favour of the petitioners and against the Revenue by our order passed in Naresh Kumar & Co. & Ors. vs. Union of India & Ors. (Civil Writ Petition No. 15583 of 1999 decided on 22nd February, 2000), reported as 2000(1) RLR 371.

2. What is now pointed out by the learned Senior counsel for the IT Department is that the main case of Naresh Kumar & Co. vs. Union of India & Ors. pertained to the Union Territory of Chandigarh whereas in some other writ petitions decided along with Naresh Kumar & Co.'s case (supra) as also in some of the writ petitions presently under our consideration L-14A licensees and L-13 licensees are the same persons and it is, therefore, urged that there can be no question of any subsequent sale being made by L-13 licensees to the L-14A licensees in such cases. It is thus contended that our judgment in Naresh Kumar & Co.'s case (supra) holding that L-14A licensees being subsequent buyers of alcoholic liquor from L-13 licensees were not "buyers" within the meaning of s. 206C of the IT

Act, 1961 (for short the Act) requires re-consideration. We are unable to accept this contention of the learned counsel. When Naresh Kumar & Co.'s case (supra) was argued along with others it was never brought to our notice that L-14A licensees and L-13 licensees in any of those cases were the same persons. We proceeded in those cases on the basis that holders of the two licences were different persons. However, if in any of these cases the two licences are found to be held by the same person then L-14A licensee will not be considered as a buyer in further sale of goods so as to be excluded from the definition of buyer as given in the Explanation to s. 206C of the Act and to that extent our previous judgment stands clarified. This clarification, in any case, does not affect the findings recorded by us in Naresh Kumar & Co.'s case (supra) nor the final result in those cases. We had also held in Naresh Kumar & Co.'s case (supra) that the Excise & Taxation Commr. who issued L-14A licences to the petitioners in an open auction was not the seller within the meaning of s. 206C of the Act and, therefore, he was not required to collect 10 per cent of the licences fee as Income Tax at source. We had also held that the amount payable in s. 206C of the Act does not include the licences fee which has to be paid by a licensee to the State Government.

3. Now coming to the present writ petitions, the petitioners herein are L-14A licensees from whom 10 per cent of the licence fee is sought to be collected as Income Tax at source under s. 206C of the Act. Shri Sawhney learned senior counsel appearing on behalf of the Department has again raised the plea that some of the writ petitioners hold both L-14A and L-13 licences. In pursuance of our directions, the petitioners have filed affidavits stating that in some of the cases the names of the firms may be same but their partners are different and they are separate legal entities. It is not necessary for us to adjudicate on this factual dispute as we are of the view that these writ petitions too have to be allowed for the other two reasons given by us while deciding Naresh Kumar & Co. (supra). It is therefore, not necessary for us to decide in the present case whether the petitioners are buyers in further sale of goods of the nature specified in the table referred to in sub-s. (1) of s. 206C of the Act.

4. For the reasons recorded in our earlier order in Naresh Kumar & Co.'s case (supra), we hold that the Excise and Taxation Commr. is not a seller within the meaning of s. 206C of the Act and that the amount sought to be collected from the petitioners as tax at source is not the amount payable within the meaning of that provision and, therefore, the Excise and Taxation Commr. could not recover 10 per cent of the licence fee as Income Tax at source.

5. In the result, the writ petitions are allowed and the impugned notices issued by the Dy. Excise and Taxation Commr. quashed leaving the parties to bear their own costs.