(2000) 06 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 681 of 2000 2 June 2000

CHANDER BHAN and CO. APPELLANT

Vs

UNION OF INDIA RESPONDENT

Date of Decision : 02-06-2000

Acts Referred:
Income Tax Act, 1961 — Section 206C

Citation : (2001) 112 TAXMAN 517

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

Bench : Full Bench

Advocate : Mohan Jain and Rakesh Aggarwal, for the Assessee R.P. Sawhney, Rajesh Bindal, M.L. Sarin and N.K. Joshi, for the Revenue, for the Appellant;

Judgement

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 and Co. and Others Vs. Union of India (UOI) and Others, .

2. What is now pointed out by the learned senior counsel for the Income Tax Department is that the main case of Naresh Kumar & Co. v. Union of India 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-B licensees to the L-14A licensees in such cases. It is, thus, contended that our judgment in Marsh 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 section 206C of the Income Tax Act, 1961 (hereinafter referred to as "the Act'') requires re-consideration. We are unable to accept this contention of the learned counsel when Naresh Kumar & Cos 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 licensees were different persons. However, if in any of those cases the two licensees 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 section 206C 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 and Taxation Commissioner who issued L- 14A licences to the petitioners in an open auction was not the seller within the meaning of section 206C 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 section 206C does not include the licence 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 u/s 206C. Shri Sawhney, the 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.s case (supra). It is, therefore, not necessary for us to decide in the present cases whether the petitioners are buyers in further sale of goods of the nature specified in the table referred to in sub-section (1) of section 206C.

4. For the reasons recorded in our earlier order in Naresh Kumar & Co.''s case (supra), we hold that the Excise and Taxation Commissioner is not a seller within the meaning of section 206C 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 Commissioner 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 Deputy Excise and Taxation Commissioner quashed leaving the parties to bear their own costs.

