

(2006) 03 KAR CK 0109

In the Karnataka High Court

Case No : Writ Appeal No's. 7825 and 8021 of 2003

Excise Commissioner and Another

APPELLANT

Vs

Mysore Sales International Ltd. and Others
 Mysore
Sugar Co. Ltd. Vs Dy. Commissioner of Income Tax and
Others

RESPONDENT

Date of Decision : 13-03-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Income Tax Act, 1961 — Section 119, 120, 120 (1), 120 (2), 120 (4)

Citation : (2006) 286 ITR 136

Hon'ble Judges : V. Gopala Gowda, J;Jawad Rahim, J

Bench : Division Bench

Advocate : P.G. Chengappa and E.R. Indrakumar, for the Appellant; K.R. Kumar, Sarangan and R.B. Krishna, for the Respondent

Judgement

V. Gopala Gowda, J.—The appellants Mysore Sales International Ltd. (hereinafter referred to as "MSIL" in short) and the Mysore Sugar Co. Ltd. (hereinafter referred to as "MSCL" in short) and the State Government represented by its Excise Commr., Karnataka, have filed these appeals questioning the correctness of the common order dt. 27th Oct., 2003 passed by the learned single Judge in Writ Petn. Nos. 6869/6874/2001, c/w WP Nos. 6967-6972/2001 reported as Mysore Sales International Ltd. v. Dy. CIT (2003) 185 CTR (Kar) 417. The first two appellants are aggrieved of the dismissal of their writ petitions by affirming the orders of assessment passed by the first respondent Dy. CIT (TDS-I). Insofar as the third appellant-Excise Commr. is concerned, he has filed the appeal seeking to set aside the impugned order passed in the writ petitions only insofar as the findings recorded on the circulars issued by him, urging various legal contentions and prayed to quash the orders of assessment passed against the first two appellants for the asst. yrs. 1995-96 to 2000-01, wherein it is directed them to pay a sum covered in the orders by allowing their writ petitions and set aside the common order passed by the learned single Judge in the abovesaid writ

petitions, urging various facts and legal contentions.

2. Certain necessary undisputed facts for the purpose of appreciating the rival legal contentions urged in these appeals are briefly stated by us in this judgment, to find out whether the impugned common order and the assessment orders passed against the first two appellants require interference by this Court in exercise of its jurisdiction and power.

3. The first two appellants are the Government of Karnataka undertaking companies engaged in manufacturing of arrack. They are governed under the provisions of the IT Act, hereinafter referred to as the "Act" in short. Prior to 1993 there were separate private bottling units in the State of Karnataka and they were manufacturing and selling arrack periodically in the entire State by conducting public auction for the purpose of conferring leasehold rights upon the contractors/buyers for retail vending of arrack in the respective areas in the State as it was monopoly trade. The successful bidders in whose favour contracts were awarded were entitled to purchase arrack from the manufacturers and bottling units of first two appellants for sale of the same by them in retail trade at the rate fixed by the State Government. In respect of the assigned area in the State, contractors were required to obtain necessary licences for the period in question from the Excise Department under the provisions of Karnataka Excise Act of 1963 read with Karnataka Excise (Lease of Right of Retail Vend of Liquors) Rules, 1969 (hereinafter referred to as Excise "Act" and "Rules" in short). It is also an undisputed fact that the sale of arrack in the State is its monopoly and therefore its sales has been under exclusive control by the State Government. The said business of the State is regulated under the provisions of the Excise Act and Rules referred to supra.

4. The second appellant is also a public limited company, controlled and regulated by the Karnataka State Government. It is assigned with the job in the nature of works contract. The Excise Supervisor will be stationed at its manufacturing unit of bottling arrack. The above manufacturers of arrack belong to the State Government as their property vests with the State Government. The Excise Commr. in Karnataka determines the amount realisable by the appellants from the contractors in whose favour periodical contracts were awarded by conferring leasehold rights upon them for vending of arrack in retail in their respective assigned areas in the State, which rates are fixed by the State under the provisions of the Excise Act and Rules. The contractors have to remit the requisite amount of excise duty into the State Government Treasury and were required to secure permits for procurement of arrack from the appellants. On production of such permits, the first two appellants herein were required to deliver arrack to the contractors/buyers to vend the same in retail in their respective areas in the State as assigned in the contracts awarded in their favour strictly in terms of the contract.

5. The provisions of Section 206C(1) of IT Act of 1961, provide for collection of Income Tax at source from the contractors/buyers by the appellants at the

specified rate in the corresponding entry in column (3) of the Table in respect of the goods of arrack purchased by them. We are concerned in these cases with the Explanation Part to Sub-section (11) of Section 206C of the Act which was inserted by the Finance Act w.e.f. 1st April, 1992. Insofar as liquor for human consumption (other than Indian made foreign liquor), the percentage of collection of Income Tax at source to be collected by the sellers is enumerated under column No. 3 of the Table provided to the said provision. It is the case of the IT Department that the said provision was amended to the statute by way of amendment, as there was a large-scale tax evasion from the persons who have been carrying on with the business of purchase and sale of the goods mentioned in the Table on account of which huge revenue loss has occasioned to the Department. Therefore, the Parliament thought it fit to plug the loopholes of huge evasion of revenue to the Department from such assesseees, hence it has statutorily created an obligation by way of an amendment to the Act on the part of the sellers to collect the tax at source from the buyers of goods of arrack at the rate enumerated under column No. 3 of the Table, i.e., equivalent to 10 per cent of the price of the liquor sold to them in these cases and the same was required to make it over to the Department as provided under the provisions of the Act as it was their statutory obligation.

6. The case of the IT Department in respect of the first two appellants is that they did not collect the Income Tax at source from the contractors/buyers for the asst. yrs. 1995-96 to 2000-01, though there is a statutory obligation on their part to collect the amount from the buyers at the rate provided under column No. (3) of the Table and remit such amount to the Department. Periodical auctions were conducted by the State Government under the Karnataka Excise (Lease of the Right of Retail Vend of Liquors Rules 1969 (hereinafter called as Rules of 1969) for conferring rights upon the buyers of vending arrack in retail in respect, of areas assigned to them in the contract awarded in their favour. Therefore, the first respondent in the appeal of MSIL had placed the demand upon the appellants calling upon them to pay the amounts mentioned in the notices, stating that they are sellers of the goods of arrack in favour of the buyers for the relevant period and called upon them to furnish the particulars regarding the sale of arrack by them at the rates fixed by the State Government under the provisions of the Act and the Rules. They submitted reply notices to the Department stating that they were not required in law to collect the tax at source from the buyers at the specified rate under the Table u/s 206C(1) of the Act from the contractors/buyers as the Excise Commr the third appellant herein-had issued a circular which is produced as Annex. A in the appeal of MSIL. Addendum was also issued in terms of Annex. B stating that they were not required to deduct the tax at source from the contractors and remit the same to the Department as provided under the provisions of the Act for having sold the liquor to them for vending in retail at the rates fixed by the State Government under the provisions of the Excise Act and the Rules. It is stated by them that the directions contained in the circulars were accepted by the appellants 1 and 2 and

therefore, they did not collect the amount from the buyers at their source as provided under the Table provided to the provision of Section 206C(1) of the Act, apart from urging the other legal contentions by them in support of their case. Further they had stated the other legal contentions in the writ petitions contending that they are not liable to pay the demanded amount from them by the Department.

7. It is an undisputed fact that even after an opportunity was given to them by the AO, they did not comply with the notice of demand dt. 26th Oct., 2000. Therefore the AO has passed the impugned assessment orders for the period in question, which are legal and valid as the same are in conformity with the provisions of Section 206C Sub-section (6) of the Act. The said orders of assessment passed by the AO came to be challenged by the two appellants before this Court by filing writ petitions urging various legal contentions; as there is no merit in any one of the grounds urged in the writ petitions, the learned single Judge had passed the impugned order dismissing the writ petitions after hearing the parties by answering the rival legal contentions urged by them by assigning his reasons.

8. The principal ground of attack of the impugned orders challenged by the appellant Nos. 1 and 2 in the writ petitions was that they were not required in law to deduct the Income Tax at source from the contractors/buyers in view of the circulars referred to supra which are issued by the Excise Commr. in Karnataka. Secondly insofar as the first appellant MSIL is concerned, it is stated that the provisions of Section 206C of the Act are not applicable to them as they come within the category of Explanation to Section 206C Sub-section (11) Clause (a) "buyer" Sub-clauses (i) to (iii) which provisions were inserted by way of an amendment by the Finance Act, 1992, which have come into force w.e.f. 1st April, 1992, wherein the definition of "buyer" under Clause (a) is explained under Sub-clause (iii) of the said clause, which provision excludes the buyers who have obtained the goods of liquor from the MSIL, by way of auction and the contracts were awarded in their favour and the sale price of the alcoholic goods to be sold by them is fixed by the State under the provisions of the Excise Act and the Rules. Therefore, it is stated by them that the buyers of the goods of arrack for the relevant period were not liable to pay Income Tax to the Department at their source for purchase of goods of liquor of vending in retail price as fixed by the State Government in their respective assigned areas in the State of Karnataka and therefore it is contended that the appellants were not statutorily required to collect the Income Tax at source from them and remit the same to the Department as contended by it.

9. The third ground of attack of the impugned assessment orders passed against them is that the lack of jurisdiction for the first respondent to initiate proceedings and pass assessment orders; in support of their legal contention, the learned senior Counsel Mr. Sarangan and E.R. Kumar contended by placing strong reliance upon the notification issued by the Chief CIT of IT Department in

exercise of his power under Sub-section (1) of Section 120 of the Act read with the Board's Notification dt. 30th March, 1988 and Sub-section (2) of Section 120 of the Act, is that he had conferred powers upon the various officers of the Department mentioned therein with their designations in column No. (2) of the notification in respect of the territorial jurisdiction mentioned under column No. (3). At SI. No. 18 of the Notification dt. 6th July, 1998 issued by him the powers are conferred upon the Asstt. CIT (TDS)-I, Bangalore and he had jurisdiction of Bangalore Urban and Rural District in relation to Chapter XVII for collection and recovery at source. But now his designation has been re-designated as Dy. CIT (TDS) under column No. (3) of the notification. The jurisdiction of the other officers in respect of various other aspects, the relevant provisions of the Act for initiating proceedings and to pass assessment orders are specifically mentioned whereas in respect of first respondent the provision of Section 206C is not specifically mentioned in the notification by conferring jurisdiction upon him to initiate proceedings and pass assessment orders against the appellants Nos. 1 and 2, who had issued the demand notice for not having collected tax at source from the buyers for the relevant period. Therefore, it is urged by them in the writ petitions that the impugned assessment orders passed against them by the AO are void ab initio in law, hence the same are not enforceable in law is the ground urged in the writ petitions by them, but the learned single Judge has not considered the same and answered properly as he had assigned irrelevant reason. The reason assigned by the learned single Judge in the impugned order by rejecting the above legal contention is that the appellants 1 and 2 are public sector undertakings, therefore they are not expected to take hyper-technical contentions before this Court regarding the jurisdiction of the officer who has passed the assessment orders; this approach of the learned single Judge is wholly untenable in law, as the appellants are entitled to urge all the legal grounds available for them in law while challenging the correctness of the assessment orders passed against them as the impugned orders challenged in the writ petitions would entail serious civil consequences upon them, hence the learned single Judge had erred in not considering the above contention properly and rejected the same which finding is vitiated in law. Therefore, they have urged in these appeals that the findings and reasons recorded in the impugned order by the learned single Judge by affirming the assessment orders passed against them are required to be set aside by this Court as the ground urged regarding jurisdiction of the AO goes to the root of the matter as it is jurisdictional fact on which ground the judicial review power is required to be exercised by this Court in these appeals.

10. In support of the above legal contention, the learned senior Counsel had relied upon a decision of the apex Court in the case of Kiran Singh and Others Vs. Chaman Paswan and Others, para 6 in support of the contention that if the AO had no jurisdiction to pass the assessment orders u/s 206C of the Act, then the orders are void, hence the same are not enforceable against them in law. Further it is urged that non-consideration of the important ground in relation to

the jurisdiction of the officer who had passed the orders of assessment has not been properly considered by the learned single Judge while exercising his extraordinary jurisdiction under Article 226 of the Constitution of India, therefore the impugned order challenged in these appeals is vitiated in law and therefore liable to be set aside. The impugned orders of assessment, which are affirmed by the learned single Judge by dismissing the writ petitions without considering the case of the appellants in a proper perspective and therefore the learned senior Counsel has contended that the order of the learned single Judge is vitiated in law.

11. The impugned orders of assessment passed by the AO against the appellants 1 and 2 are void ab initio in law, therefore, non-consideration of this important legal aspect of the matter by the learned single Judge while answering the legal contentions urged on behalf of the appellants 1 and 2 has certainly vitiated the order passed by the learned single Judge, hence the same requires interference by this Court in exercise of its appellate jurisdiction and power. It is also further contended by them that the assessment orders, which will certainly have a serious civil consequence upon the appellants 1 and 2 as they are burdened with huge sums of crores of rupees payable by them towards tax to the Department for their not collecting the tax at source from the contractors/buyers and remitting the same to the Department. Therefore the AO was required to comply with the principles of natural justice by affording reasonable opportunity to the appellant Nos. 1 and 2 before passing the assessment orders against them, even though there is no such statutory provision under the scheme of Section 206C of the Act. This aspect of the matter has been examined by the learned single Judge but he had accepted the contention stating that the appellant Nos. 1 and 2 apart from questioning the assessment orders by them on the ground that the same are bad in law for non-application of Section 206C of the Act, to the buyers as they were excluded from the Clause (a) "buyer" Explanation to Sub-section (11) of the abovesaid section and the exemption clauses as enumerated under Sub-clauses (i) to (iii). It is contended by the learned senior Counsel that the impugned orders of assessment were challenged by the appellants 1 and 2 in the writ petitions contending that the AO did not conduct an enquiry to find out whether they are liable to pay the tax amount to the Department as there is a statutory obligation on their part for not discharging their statutory duty in collecting the tax at source as provided u/s 206C(1) of the Act from the contractors/buyers for the period in question and remitted to the Department as required u/s (3) of the said provision. Therefore, it is urged by them that the learned single Judge has committed an error in law in dismissing the writ petitions by recording a finding against the appellants in the impugned order on the contentious issues holding that the orders of assessment passed against them are legal and valid. It is the further submission of the learned senior Counsel that the impugned order of the learned single Judge is vitiated in law, as he has not properly appreciated the legal contentions urged on behalf of the appellants 1 and 2 with regard to the principles of natural justice as the AO prior

to passing the assessment orders had not complied with the same by affording reasonable opportunity to them and therefore the same warrants interference by this Court in these appeals. It is also further contended by the learned senior Counsel that the learned single Judge has not applied the decisions upon which strong reliance has been placed by them in support of their above legal contention on merits though he had referred to (them) in the impugned common order, even though the observations made in the said cases are in all fours applicable to the fact situation and the learned single Judge had distinguished the decisions cited by them wherein the various High Courts have interpreted the provisions of Section 206C, Explanation to Clause (a) "buyer" as inserted by way of amendment to the Act to Sub-section (11) of the Act particularly the phrase "obtained and not purchased" as occurred in Sub-clause (iii) by placing reliance upon the definition of Black's Law Dictionary, Chambers 21st Century Dictionary, Encyclopaedic Dictionary, Mitra's Legal and Commercial Dictionary and Judicial Dictionary by Justice L.P. Singh and strongly placed reliance with regard to the interpretation of the said phrase and the judgment of English Courts in the case of Commr. of Customs & Excise v. Top Ten Promotions Ltd. 1969 (3) All ER, and Privy Council decision reported in 1958 AC 549. The learned senior Counsel Mr. Sarangan, submits that the said approach of the learned Judge in not applying the observations made in the cases by various High Courts to the facts of the appellants 1 and 2 and passed the impugned order, therefore the same is erroneous in law, as the exclusion clauses of the Explanation of the "buyer" as provided under explanation of buyer to Section 206C Sub-section (11) of the Act has not been properly appreciated by him and applied the above exemption sub-clauses to the case on hand, though they are applicable in support of their contention He had also placed strong reliance upon the meaning of the phrases "by way of" as occurred in Sub-clause (iii) of Clause (a) "buyer" with regard to Oxford Dictionary, Random House Dictionary and he has placed reliance upon the number of decisions of the Supreme Court and various High Courts in support of his principal contention that the provisions of Section 206C has no application to the case on hand, in view of Explanation part as referred to above which provisions of the Act was amended to the Act by Finance Act No. 92. He had further contended that the observations made in the various decisions of various Courts namely Division Bench decision of Himachal Pradesh High Court in the case of Gian Chand Ashok Kumar and Company and Others Vs. Union of India (UOI) and Others, in the case of K.K. Mittal and Co. Vs. Union of India (UOI) and Others, it has explained the phrase "price fixed" by the State Government under the Act. He has also placed reliance upon another decision of the apex Court in the case of UCO Bank v. CIT & UCO Bank, Calcutta Vs. Commissioner of Income Tax, West Bengal, . He has also placed strong reliance upon the Constitution Bench judgment and Three Judges Bench judgment of the apex Court in support of the proposition of law that the circulars issued by the IT Department in exercise of its statutory power u/s 119 of the Act beneficial to the assessee are toned down the rigour of the law and therefore they are binding on the Revenue in the administration of the Act. In this regard, he had placed reliance upon other

judgments of the apex Court, i.e., Ellerman Lines Ltd. Vs. Commissioner of Income Tax, West Bengal, Calcutta, , K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, and Full Bench decision of HP High Court reported as Saini and Co. and Others Vs. Union of India (UOI) and Others, , Vinod Rathore Vs. Union of India (UOI) and Others, of the MP High Court, Bikul Das and Others Vs. State of Assam and Others, and also strong reliance upon a decision of the Supreme Court. It is contended by the learned senior Counsel that the learned single Judge had accepted the contentions urged on behalf of the Department by its senior standing counsel that the price is not fixed by the State Government under the Act for sale of goods of liquor of arrack in retail by the buyers for the reason assigned by him that as there is minimum and maximum price and therefore there is no price fixed for sale of liquor in retail under the Act or Rules by the State Government. Therefore, he had contended that the finding recorded by the learned single Judge that the provisions of Sub-sections (1) and (2) of Section 206C of the Act are applicable to the appellants 1 and 2, hence they were required to collect the Income Tax at source from the buyers is an erroneous approach of the learned single Judge. Hence they submit that the impugned order of the learned single Judge and assessment orders passed by the AO are liable to be set aside and quashed respectively by this Court in exercise of this Courts' judicial review power under Articles 226 and 227 of the Constitution of India.

12. The learned Counsel Dr. Krishna appearing on behalf of the second appellant the Mysore Sugar Co. Ltd., had adopted the submissions made by the two learned senior Counsel on behalf of the MSIL. Further he has elaborated his submissions that the provisions of Section 260C are not attracted to the second appellant for two reasons namely, (1) that it is a public sector undertaking as mentioned under Sub-clause (1) of Clause (a) and it is a buyer from the manufacturing units of liquor and it has sold the arrack goods to the contractors/ buyers which is second sale in their favour and therefore the exemption which comes under exemption Sub-clause (ii) of Clause (a) Explanation to the aforesaid provisions of the Act is applicable to it. Therefore, he had submitted that the contractors/buyers, who have purchased goods from Mysore Sugar Co. Ltd. are not liable to pay the tax under the provisions of the Act for having purchased goods of arrack for sale in retail. Therefore, it is contended by him that it was not legally liable to collect tax at source from its buyers during the relevant period and remit the same under Sub-section (3) of Section 206C of the Act to the Department. Further he had contended that the contractors who are the buyers have not obtained the goods from the appellant-company by way of auction, awarding contract in their favour in auction is the right conferred upon the contractors to purchase the goods of liquor from the appellant No. 2. Therefore, he had contended that the company falls under the exemption clauses of the Explanation of the definition of the buyer as specified in the sub-clauses. It is contended by the learned Counsel that AO has not considered the above important aspect of the matter at the time of passing the assessment orders and

the same has not been properly appreciated by the learned single Judge though the legal contentions were urged before him as has been stated in these appeals. Therefore, it is contended by him that the impugned orders of assessment and the order of the learned single Judge are vitiated on account of error in law as both the AO and learned single Judge have wrongly interpreted the provisions of the Act and applied to the appellants 1 and 2 by rejecting their tenable contention holding that they are liable to pay tax to the Department. He has also placed strong reliance upon a Bill which was placed on the floor of the Parliament with regard to the existing provision of Section 206C by producing the extract from the (2003) 180 CTR (St) 210 : (2003) 260 ITR 224 with regard to substitute the Sub-clause (iii) of definition "buyer" in the Explanation to the above section of the Act. Sub-section (1) of 206C of the Act inter alia provides collection of tax at source at the rate of 10 per cent as mentioned in the corresponding entry in column No. (3) of the Table in the case of Indian made liquor and scrap other than Indian made foreign liquor from the buyers. The object of introducing such a bill by the Parliament is mentioned, relevant portion of which is extracted as hereunder:

The Bill proposes to substitute the Table in Sub-section (1), inter alia, to provide for collection of tax at source at the rate of ten per cent in the case of Indian made foreign liquor and scrap.

The Bill also proposes to amend the said Explanation so as to make the provisions of the section applicable in the case of a buyer where the goods are not obtained by him by way of auction and where the sale price of such goods to be sold by the buyer is fixed by or under any State Act.

These amendments will take effect from 1st June, 2003.

So as to make the provisions of the Section 206C of the Act applicable in the case of a buyer where the goods are not obtained by them by way of auction and where the sale price of such goods to be sold in retail by a buyer is fixed by the State Government under the Act and Rules. The abovesaid amendment to the Act has come into force w.e.f. 1st June, 2003 and therefore it is contended that the above provisions of the Act were not applicable to the buyers for the relevant period for payment of tax to the Department by either the buyers or sellers.

13. It is further contended by him that undisputedly no action was initiated by the Department against the appellant Nos. 1 and 2 uptill 2001 for recovery of tax from them for not having discharged their statutory duty by collecting tax at source from the buyers as required u/s 206C for the period in question as the Department has understood that the above provisions of the Act r/w Explanation to Sub-section (11) Clause (a) buyer and exemption Sub-clauses (i) to (iii) are not applicable to cases of this nature. Therefore, he had contended that not taking action by the Department against the above appellants for quite a long time clearly goes to show that the Department has understood the exemption clauses of buyer correctly that the provisions of Section 206C are not applicable

to the fact situation of the present cases and therefore the same was not enforced against the sellers herein. The learned Counsel with reference to the above legal grounds submits that the appeal must succeed, the impugned order of the learned single Judge and the impugned assessment orders are liable to be set aside and quashed respectively by allowing these appeals.

14. The learned Government advocate Mr. P.G. Chengappa on behalf of the appellant Excise Commr. and State Government contends that the findings and the reasons recorded by the learned single Judge with regard to the circulars issued by the Excise Commr. stating that Section 206C of the Act is attracted to the contractors/buyers for payment of tax at source to the Department for having purchased goods of arrack from the appellant-companies who are sellers. Since the learned single Judge has held that the circulars are contrary to the provisions of Section 206C of the Act and further he has held that the appellant Nos. 1 and 2 should not have applied the circulars to the case on hand, further it is contended by him that the circulars are legal and valid as the same were issued by the Excise Commr. in exercise of his power under the provisions of the Karnataka Excise Act and Rules. Therefore, State Government is aggrieved of the findings and observations made in the impugned order with regard to the circulars they have also filed appeal.

15. The learned senior standing counsel for the Department Mr. Indra Kumar had sought to justify the findings and reasons recorded by the learned single Judge in the impugned order contending that the legal contentions urged in these appeals have been carefully examined by him and given due consideration and properly interpreted the provisions of Section 206C Sub-section (11) and Explanation part Clause (a) "buyer" regarding the exclusion of the contractors who are the buyers of the goods of Indian liquor of arrack by referring to the fact situation keeping in view the intendment and object of insertion of the said provisions to the Act, the constitutional validity of Section 44AC of the Act has been dealt with by the apex Court and upheld the constitutional validity of the provisions; the learned single Judge has referred to the above judgment and he has also interpreted the words occurred in the statutory provisions of Section 206C Sub-section (11) and Explanation of Clause (a) "buyer" and exemption clauses are carefully examined and rightly accepted the case of the Department. Further he contends that the learned single Judge had rightly placed reliance upon a decision of the apex Court in the case of Hindustan Lever Ltd. Vs. Municipal Corporation of Greater Bombay and Others, , wherein it has observed that "when interpretations are reasonably possible one beneficial to the assessee is to be given" and further learned single Judge with reference to the exemption of Sub-clauses to the Explanation Clause (a) "buyer" he has rightly held "that there cannot be any two interpretations and there could be only one interpretation on facts namely the interpretation of the phrase "obtained" as occurred in Sub-clause (iii)" the goods are not obtained by him by way of auction has been rightly interpreted and held that the buyer is liable to pay tax at source at the time of obtaining goods of arrack from the appellant-companies and also further placed reliance upon the

decision of the apex Court in the case of M/s Mysore Minerals Limited, M.G. Road, Bangalore Vs. The Commissioners of Income Tax, Karnataka, Bangalore, wherein the apex Court has held in the said case that "interpretation has to be given while interpreting the tax notwithstanding statute. Interpretation of statute benefit has to be given. That would depend upon the facts of each case. When a fiscal statute is introduced to eliminate a mischief, Court cannot provide a beneficial interpretation thereby continuing the mischief which is to be avoided in terms of the statute and in terms of the legislative power". He further stated that by giving beneficial interpretation to the statutory provisions amounts reviewing the object and intendment of enactment of Section 206C which would result in continuing tax evasion by a trader, and therefore he submits that the learned single Judge had rightly rejected the legal contention urged in this regard by the learned senior Counsel on behalf of the appellant-companies and rightly applied the statutory provisions to them and correctly answered the contentious issues against the appellant Nos. 1 and 2 that arose for his determination in the writ petitions and held that the Department has rightly exercised its statutory power by applying the provisions of Section 206C to the appellant-companies and fastened the liability by the AO upon them, as they did not discharge their statutory obligation as required in law by not collecting the Income Tax at source from the buyers for the relevant period and therefore they are statutorily liable to pay the tax to the Department as provided under Sub-section (6) of Section 206C of the Act. He also contends that the Explanation Clause (a) "buyer" insofar as the Mysore Sugar Co. is concerned, none of the Sub-clauses (i) to (iii) are applicable to it for the reason that the buyers/contractors were not excluded on any one of the above exemption clauses or exempted from payment of Income Tax at source for purchase of goods of arrack and sale of the same in retail price as fixed by the State Government. But on the other hand the contractors/buyers (are) statutory leaseholders and therefore they had acquired rights for purchase of liquor of arrack on the basis of public auction conducted yearly by the State Government under the Rules, as they were highest bidders and obtained permits from the State for the purpose of procuring arrack for sale in retail vending at the rates fixed by the State Government under the Act and Rules in the respective assigned areas of the State from the appellant-companies. No doubt the price for sale of retail vending by the buyers was fixed by the State under the Act and Rules. Sub-clause (iii) is not attracted to both the appellant-companies for the exclusion of them from paying tax at source to the companies, who are sellers from whom they procured arrack by way of sale, as they were exempted from the Explanation clause and sub-clauses to the provisions of the Section 206C of the Act. Therefore, it is contended by him that the learned single Judge had correctly interpreted the provisions of the Act by keeping in view the law laid down by the apex Court and the decision of the Division Bench of this Court regarding interpretation of each word contained in the statutory provisions of the fiscal statute has to be examined and due consideration should be given to the same and further submits that the learned trial Judge has come to the right conclusion with regard to the legal contentions

urged by the learned senior Counsel on behalf of the appellant-companies and he had rightly rejected the same holding that the same are wholly untenable in law. Therefore, he submits that these are not fit cases for this Court to interfere with the impugned order and assessment orders passed by the AO.

16. The learned standing counsel for the Department has also placed strong reliance upon the provisions of Sections 120(1) and (2) of the Act that the Chief CIT has exercised his statutory power under the above provisions of the Act and issued the notification conferring jurisdiction originally upon the various officers for passing assessment orders against the assessee on the basis of territorial jurisdiction with reference to the provisions of the Act. The learned standing counsel appearing on behalf of the Department has placed strong reliance upon the judgment of the Supreme Court in the case of *Novopan India Ltd. v. Collector of Central Excise & Customs* 1994 (Suppl) (3) SCC 606 wherein the apex Court has laid down the law after examining the Central Government Exemption Notification issued under the provisions of Salt Act, 1944 r/w Rules and Schedule I Item 16-B with regard to the goods "un-veneered particle boards" at length with regard to exemption from the payment of tax by the assessee in respect of such goods. The learned Counsel has placed strong reliance upon para 2 of the said decision, wherein it has referred to its earlier decision in the case of *Mangalore Chemicals & Fertilisers Ltd. v. Dy. CCT* 1992 (1) SCC 21 of the said judgment is extracted in which paragraph another decision of the apex Court viz., *Collector of Central Excise, Bombay-I and Another Vs. Parle Exports (P) Ltd.*, is extracted in the said decision, relevant portion of which is reproduced in this judgment as hereunder:

While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided.

Further, the Supreme Court in the case of *Novopan India Ltd.*'s case referred to supra at para 12 has observed thus:

The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the legislature manifest on the statutory language. Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. If the words are plain and clear and directly convey the meaning, there is no need for any interpretation.

And further, the apex Court has also placed reliance upon the extracted portion from the decision of the apex Court in the *Union of India and others Vs. M/s. Wood Papers Ltd.* and another, of the said judgment is extracted at para 12 of *Novopan*'s case referred supra which reads thus:

Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a

subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction?.

17. Placing strong reliance upon the said decision of the apex Court, the learned Counsel for the Department justifies the judgment of the learned single Judge contending that he had kept in view the object and intendment of Section 206C, in inserting to the Act by way of amendment, that large number of buyers of the goods as mentioned in the Table to the said provision have evaded from payment of tax at source to the Department, though they are liable to pay tax as the period of business that would be carried on by the buyers of goods specified in the Table would be for limited period. The main object of the Parliament for insertion of the said provision to the Act was to plug the loopholes in the Act and to see that the tax is collected from them at source by the seller by casting statutory obligation upon the seller at the stipulated rate in the Table and remit the same to the Department as provided under Sub-section (2) of Section 206C. The Explanation Clause (a) "buyer" and exemption Sub-clauses (i) to (iii) to Sub-section (11) of the above provisions do not suffer from any ambiguity which calls for their interpretation by this Court. Therefore he strongly contends that the appellant-companies do not fall within any of the exemption clauses referred to supra as the contractors/buyers have to pay the Income Tax at source to the Department as they had obtained liquor during the relevant period for vending the goods of arrack in retail after acquiring rights from the Excise Department of the State Government in public auction and therefore the sellers had got statutory obligation under the above provision of the Act to collect the tax amount by way of deduction from them at the time of sale of goods of Indian liquor of arrack as they have purchased the same from the appellants 1 and 2 during the period in question is an undisputed fact. Therefore, the learned single Judge has rightly answered the findings against the appellant Nos. 1 and 2 on the contentious issues that arose for his consideration by assigning valid and cogent reasons with reference to the judgments of the Supreme Court referred to supra, the learned Counsel for the Revenue contends that the said findings and reasons recorded in the impugned order are in conformity with the provisions of the Act and law laid down by the apex Court. Therefore, he had contended that the impugned order does not call for interference by this Court in these appeals and prayed for dismissal of the same with costs.

18. The learned Counsel appearing on behalf of the IT Department further submits that the legal ground regarding jurisdiction of the AO as urged by the appellants is a mixed question of fact and law and therefore the same should have been urged by them before him. When they have submitted their reply to the notice served upon them by the Department they did not take up the plea of jurisdiction of the AO at the initial stage contending that he had no jurisdiction to pass assessment orders and therefore they are not entitled to take up such plea

in the writ petition proceedings for first time. Nonetheless, the learned single Judge has examined this aspect of the case and answered against them. In justification of that finding the learned standing counsel has placed strong reliance upon the provisions of Section 124(4) and (5). The said provision refers to the provision of Sub-sections (2) and (3) of the above section which speaks that where an assessee has questioned the jurisdiction of the AO, he should after satisfying with the correctness of such plea could have referred the matter to the officer who would have got jurisdiction for determination of assessment against the appellant-companies. He further submits that under Sub-section (5) of Section 124, which provision is a non obstante clause with regard to any direction or order issued u/s 120 of the Act to the assigned AO in such notification should have passed an order of assessment under this Act by assessing the income accrued or arisen or received within the area, if any, over which he has been vested with the jurisdiction by virtue of the direction or orders issued under Sub-sections (1) and (2) of Section 120 of the Act. Strong reliance also has been placed by the learned Counsel with regard to the various directions issued by the Chief CIT in the notification to the first respondent, he had been conferred with the jurisdiction for the purpose of assessment of Income Tax payable by the appellant companies. Therefore, the contention urged by the appellants' senior counsel in this regard that AO had no jurisdiction to pass assessment orders against them is wholly untenable both on facts and in law, hence, the learned single Judge has rightly rejected the said contention which does not have any merit for consideration in these appeals.

19. With regard to the last contention urged on behalf of the appellant-companies that opportunity was not given to them by the AO before passing the assessment orders, the learned Counsel for the Revenue submits that this contention of them is once again factually incorrect. He had submitted with reference to the records that though adequate opportunity was given to them, they have failed to avail the same by submitting replies, the proceedings went on for a considerable time before the AO. Therefore, they cannot blame the Department in the writ petition proceedings contending that they have not given fair and reasonable opportunity to them to put forth their case before the AO prior to passing the assessment orders. In view of the above factual position the contention urged on behalf of the companies that they are not liable to pay the amount assessed in the impugned orders as the provisions of Section 206C did not attract to the buyers who have purchased goods of arrack during the relevant period on the basis of the leasehold rights who were exempted under Sub-clauses (i) to (iii) of the Explanation Part Clause (a) "buyer" is wholly untenable in law. Apart from the said legal contention, learned Counsel on behalf of the Department has further contended that the learned single Judge has examined the various legal contentions with regard to the exemption clause and Explanation Clause (a) of Sub-clauses (i) to (iii) in respect of the second appellant and Sub-clause (iii) in respect of the first appellant, therefore he had stated that the question of remitting the case to the AO after setting aside the

impugned orders for his reconsideration do not arise as they have not made out a case for remanding the cases to the AO for his reconsideration. He further submits that the learned single Judge had recorded a finding on the question of liability of the companies after examining the relevant provisions of the Act with reference to the case law on the question decided by the apex Court and this Court and he had decided the case on merits, keeping in view the undisputed fact that they did not collect the Income Tax at source from the buyers for the period in question though they were statutorily obliged to do so.

20. We have heard these matters at length for a number of days with reference to the provisions of the Act and contentions urged on behalf of the parties.

21. In view of the rival legal contentions urged by the learned senior Counsel and standing counsel on behalf of the parties the following points would arise for determination of this Court:

(i) Whether the assessment orders passed by the AO are vitiated on account of erroneous reasons or suffers from error in law?

(ii) Whether the AO had jurisdiction to initiate proceedings and pass the assessment orders against the appellant-companies?

(iii) Whether the orders of assessment passed by the AO is in compliance with the principles of natural justice?

(iv) Whether the impugned common order passed by the learned single Judge warrants interference by this Court in these appeals?

22. All the above points are answered together by assigning the following reasons:

23. We have examined carefully the statutory provisions of Sections 44AC and 206C and Explanation part to Sub-section (11) to the above provisions by way of amendment inserting Clause (a) "buyer" and Sub-clauses (i) to (iii) of exemption clauses as enumerated therein for the purpose of answering the legal contention as to whether the appellants Nos. 1 and 2 were exempted from the applicability of the abovesaid provisions of the Act and that they are not liable to pay tax to the Department. The provisions of sub-section with sub-clauses are extracted hereunder for proper appreciation of the legal submissions of the learned senior Counsel on behalf of the appellant-companies:

Sub-section (11) with which we are concerned provides for an application in this regard. However, in the Explanation it is stated for the purpose of this section,

Clause (a) : Buyer means a person who obtains in any sale by way of auction, tender or any other mode, goods of the nature specified in the Table in Sub-section (1) or the right to receive any such goods but does not include,

(i) a public sector company;

(ii) a buyer in the further sale of such goods obtained in pursuance of such sale,

or;

(iii) a buyer where the goods are not obtained by him by way of auction and where the sale price of such goods to be sold by the buyer is fixed by or under any State Act.

We have also examined and considered the above legal contention urged on behalf of the companies with reference to the decisions of the Full Bench of Himachal Pradesh High Court, judgment of Punjab and Haryana and other High Courts upon which the learned senior Counsel have placed strong reliance in support of their legal contention regarding the applicability of the provision of Section 206C of the Act to the case on hand to the buyers. The learned single Judge in his judgment has referred to Section 206C, Sub-section (6), Explanation clause, sub-clauses of the Act referred to supra and also keeping in view the decision of the Supreme Court in the case of Union of India and another etc. etc. Vs. A. Sanyasi Rao and other etc. etc., had answered the contentious points against the appellants 1 and 2.

24. It is an undisputed fact that contracts were awarded by the Department of excise in favour of the contractors/buyers during the relevant period who have purchased the liquor/arrack from the appellants 1 and 2 after they acquired the leasehold rights for vending the same in retail at the rates fixed under the Excise Act and Rules in their respective assigned areas in the State. In this regard, the learned trial Judge had interpreted the phrase "obtained and not purchased" as occurred in the provision of Sub-clause (iii) of Section 206C of Clause (a) "buyer" in favour of the Department by rejecting the legal contention that the buyers of the goods of arrack during the relevant period were not liable to pay tax and the appellant Nos. 1 and 2 and therefore they were not required in law to collect tax at source from them with reference to the decision of the apex Court. The relevant provision of Clause (a) "buyer" and exemption Sub-clauses (i) to (iii) are extracted above in this judgment and it is necessary for us to refer to the decision of the Supreme Court in the case of Keshavji Ravji & Co. v. CIT (1990) 82 CTR (SC) 123 : (1990) 183 1TR 1 upon which strong reliance is placed by the learned standing counsel on behalf of the Department with regard to the legal principle that "as long as there is no ambiguity in the statutory language, resort to any interpretative process to unfold the legislative intent becomes impermissible. The supposed intention of the legislature cannot then be appealed to whittle down the statutory language which is otherwise unambiguous. If the intendment is not in the words, it is nowhere else. The need for interpretation arises when the words used in the statute are, on their own terms, ambivalent and do not manifest the Intention of the legislature" is the law laid down in the above case which is rightly applied to the fact situation of the present case by the learned single Judge.

25. This abovesaid legal principle enunciated in the judgment of the apex Court is carefully considered by the learned single Judge keeping in view the observations made by the apex Court in the Sanyasi Rao's case (supra). The

provisions of Section 206C is by way of amendment to the Act and was inserted to the Act by the Parliament which provisions have come into force w.e.f. 1st April, 1989. The object of insertion of the said provisions to the Act by way of amendment is that there was huge evasion of Income Tax to the Department from the buyers having regard to the nature of business which they have been carrying with trade in the goods of Indian liquor other than foreign made in the country, they have been carrying on with their business by getting contracts awarded in the public auction from the State Government which is an undisputed fact, as the sale of arrack in the State is the monopoly trade of the State Government, therefore, it has been conferring leasehold rights upon the buyers during the relevant period by conducting public auction or tender or any other mode that is required to be determined as provided under the Rules referred to supra. It is the case of the Department that it had noticed that large number of contractor's contracts were being awarded in favour of benami persons and there was transaction of crores of rupees in the said trade, on account of this kind of benami transaction which was being carried on by the buyers there was huge loss of revenue to the Central Government as they were evading to pay the tax at source which was the main object and intendment for the Parliament to insert Section 206C by way of amendment and provide a Table prescribing the nature of goods under column No. 2 and the percentage of the tax amount to be collected by the sellers from the buyers as specified under column No. (3) in respect of the goods purchased by them subject to other provisions of the IT Act. The abovesaid provisions have been correctly interpreted and answered by the learned single Judge in favour of the Revenue after careful examination of the relevant provisions of the Act keeping in view the object and internment of the Act by considering the legal contentions urged on behalf of the companies with regard to the exemption provision of Clause (a) "buyer" and exemption Sub-clauses (i) to (iii) according to the appellant-companies as enumerated in the Explanation to Sub-section (11), Clause (a) "buyer" means a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table in Sub-section (1) or the right to receive any such goods. The interpretation of the said provisions has been made by the learned single Judge after careful examination of the relevant provisions of the Act and also upon the decision of the apex Court reported in the case of United Bank of India, Calcutta Vs. Abhijit Tea Co. Pvt. Ltd. and Others, upon which judgment the learned standing counsel for the Department has strongly relied with regard to purpose of interpretation of the provision of the fiscal statute. We have also considered another decision of the apex Court in the case of Novopan India Ltd. v. Collector of Central Excise & Customs referred to supra upon which learned standing counsel for the Revenue has placed reliance in justification of the applicability of the above provisions to the buyers and appellants 1 and 2 as held by the learned single Judge, wherein the apex Court had an occasion to examine the exemption notification issued by the Central Government in exercise of its powers under Sub-section (3) of Section 5 of the Salt Act, 1944 and Schedule I, Item 16-B with regard to the words and phrase occurred in the above provision.

"Un-veneered particle boards" wherein the apex Court at para 12 has referred to its earlier decision which went from this Court in the case of Mangalore Chemicals & Fertilisers Ltd. v. Dy. Comrnr. of Commercial Taxes 1992 S (1) SCC 21, it has extracted relevant paragraphs namely paras 24 and 27 which are very relevant to be extracted in this judgment to appreciate the contention of learned senior Counsel on behalf of the companies by placing reliance upon exemption provisions to Sub-section (11) of Section 206C the Clause (a) "buyer" is explained. We have to examine whether the contractors are the buyers of the goods of arrack from the companies/sellers by virtue of leasehold rights acquired by them in public auction conducted by the Department. The legal contention on behalf of the appellant-companies is that they have not obtained the goods of arrack by auction but only by way of permits they had purchased the same from the companies. Therefore, they have urged that Sub-section (1) of Section 206C of the Act is not applicable to the contractors/buyers as they were exempted under Sub-clauses (i) to (iii) under the Explanation of "buyer". Hence it is urged that they were not liable to collect Income Tax at source from the buyers and therefore they are not liable to pay the amount covered in the assessment orders to the Department and also placed reliance upon the circulars issued by the Commr. of Excise Department, and therefore they did not discharge the statutory obligation of collecting tax at source from the buyers as they have understood the said circulars with regard to the exemption Sub-clauses (i) to (iii) under the Explanation to Clause (a) "buyer" to the above provision of the Act. We have carefully examined the above legal contention urged on behalf of the appellants Nos. 1 and 2 to answer the same. By a careful reading of Clause (a) "buyer" and Sub-clauses (i) to (iii) of exclusion "buyer" from payment of tax at source and the sellers had no statutory obligation to collect the tax at source as referred to in the provision of Section 206C Sub-section (1) of the Act and remit the same to the Department under Sub-section (3) of the above provision. Whether the decision in the Mangalore Chemicals & Fertilisers Ltd. (supra) would support the contention urged on behalf of the Department, is also considered by us in these appeals.

26. For this purpose it is worthwhile to refer to para 24 of the above decision, which is extracted at para 12 in Novopan's case referred to supra which reads as follows:

Shri Narasimhamurthy again relied on certain observations in CCE v. Parle Exports (P) Ltd. in support of strict construction of a provision concerning exemptions. There is support of judicial opinion to the view that exemptions from taxation have a tendency to increase the burden on the other un-exempted class of taxpayers and should be construed against the subject in case of ambiguity. It is an equally well known principle that a person who claims an exemption has to establish his case. Indeed, in the very case of Parle Exports (P) Ltd. relied upon by Shn Narasimhamurthy, it was observed:

while interpreting an exemption clause, liberal interpretation should be imparted

to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided.

(Emphasis, italicised in print, is added)

27. With regard to the aforesaid decision of the Supreme Court in Mangalore Chemicals & Fertilisers Ltd."s case referred to in Novopan v. Collector of Central Excise and Customs referred to supra the Supreme Court has held that "it is an equally well known principle that a person who claims an exemption has to establish his case". In view of the above, it is also necessary to refer to the observations made at para 16 with regard to Mangalore Chemicals & Fertilisers Ltd. (supra) extracted herein:

We are, however, of the opinion that, on principle, the decision of this Court in Mangalore Chemicals and in Union of India v. Wood Papers referred to therein-represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assesses-assuming that the said principle is good and sound-does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in Mangalore Chemicals and other decisions, viz., each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption.

(Emphasis, italicised in print, added)

28. In view of the abovesaid exposition of law laid down by the apex Court in the above cases referred to supra and by careful reading of the provisions of Section 206C and Explanation portion of Clause (a) "buyer", and exemption Sub-clauses (i) to (iii) according to appellant-companies and keeping in view the object and intendment of the Parliament for insertion of the said provisions to the Act, the learned Addl. Government advocate had produced the notification Gazetted "Adhisuchane" dt. 10th May, 2002 pursuant to the direction issued by this Court. The notification issued by the 4th respondent Excise Commr. under Rule 4 of the Karnataka Excise (Arrack Vend Special Conditions of Licenses) Rules, 1967 referred to purchase of arrack from the Mysore Sugar Co. Ltd., who are the manufacturers of the arrack and the learned Government advocate has

categorically made submissions that the purchase of arrack by the buyers and sale of the same at the rate fixed by the State Government under the Rules only given to the contractors/buyers by conducting auction. In view of the said notification and by careful reading of Rule 3 of Karnataka Excise (Lease of the Right to Retail Vend of Liquors) Rules, 1969, there is only one kind of buyer of goods of arrack from the manufacturers/sellers during the relevant period.

29. Rule 3 of the Rules, provides that right of retail vending of liquors may be disposed of by the Department: (i) by tenders; (ii) by auction; (iii) by tender - cum-auction; or (iv) in any other manner. Upon these phrases, strong reliance is placed by the learned senior Counsel appearing on behalf of the appellants Nos. 1 and 2 to contend that the right acquired by the contractors to purchase arrack is not necessarily by means of tender or auction, it could be in any other manner also. The said contention of them does not hold water for the reason that Rule 3 of Rules 1969 provides for conferring right upon the buyers of vending of liquor in retail in the manner referred to supra and the submission made by the learned Addl. Government advocate placing reliance upon the notification referred to supra is that only one type of buyers were there at the relevant period who have purchased the liquor from the appellant Nos. 1 and 2 and therefore the liquor sold by the companies in favour of the contractors had acquired right of purchase of goods of arrack by participating in public auction. The conferment of leasehold rights upon the buyers by the State Government other than by way of tender or auction, i.e., in any other manner as the State Government may by order specify in the proviso to the Rule 3 of the Rules means that if the disposal of rights of leasehold of vending arrack in retail is not finalised by the Department in any one of the modes either by auction or tender, then the State Government may by an order direct that it could be done in any other manner as provided under the above rule. This provision of the Rules makes it abundantly clear that if, the auction of leasehold rights in favour of contractors for retail vending of arrack in the assigned areas is not by way of public auction, then the State Government is required to follow the other mode as provided in the rule viz., in any other manner by taking its decision, It is not the case of the appellants that the leasehold rights were not acquired by the contractors/buyers during the relevant period and that they had acquired right by other mode other than the public auction or tender as required under Rule 3 of the Rules, It is not the case of the appellants Nos. 1 and 2 that the leasehold rights were conferred upon the contractors/buyers of vending arrack by not following the procedure as provided in Rule 3 of the Rules, but by following the mode in any other manner. Therefore, the rights conferred upon the contractors/buyers for purchase of arrack from the companies during relevant period is by way of public auction is an undisputed fact and therefore provision of Section 206C of the Act creates a statutory obligation upon the appellant-companies being sellers of liquor in favour of buyers for vending the same in retail in their respective assigned areas awarded in their favour by receiving such amount from such buyer by way of issue of cheque or draft or any other mode collected from the buyer as specified in

column No. (3) of the Table, certainly the goods purchased by the buyers is for the sale of alcoholic liquor for human consumption other than the Indian made foreign liquor. Sub-section (2) of Section 206C provides that the buyer (seller) to recover tax from the buyers and the same shall be without prejudice to any other mode of recovery under the provisions of the Act, The provisions of Sub-section (3) of Section 206C of the Act further casts an obligation upon the appellant-companies being the sellers that they shall pay or remit the collected tax at source from buyers within the date to the Department. The amount so collected by the seller and remitted to the Department goes to the credit of the Central Government or as the Board directs. Sub-section (5) of Section 206C casts an obligation on the part of the seller that collecting tax at source from the buyer in accordance with the provision of Sub-section (1) of Section 206C shall be remitted within ten days of receipt of the amount from the buyer to whose account such amount is deducted, from whom such payment is received, seeking to deposit the amount collected and specify the amount collected and how the tax is collected from other members may be prescribed. Sub-section (6) further casts a responsibility upon the seller to collect tax, who fails to collect the tax. Notwithstanding such failure, it shall be liable to pay the tax to the Central Government in accordance with the provisions of Sub-section (3) of Section 206C of the Act. In view of the above provisions of the Act, the demand notices were rightly served by the AO upon the appellants is an undisputed fact demanding to pay the tax amount to the Department, which was required to be collected by them from the buyers for the period in question. The provisions Sub-sections (7) and (9) of Section 206C provide the procedure required to be followed by the Department regarding non-acceptance of tax amount collected from the buyers at such lower rate.

30. By a careful reading of the exemption clauses of exclusion of the contractors/ buyers as explained to Sub-clause (ii) of Clause (a) "buyer" u/s 206C, no doubt both the appellants are public sector companies but they are not the buyers of Indian liquor of arrack from manufacturers but they themselves are manufacturers of liquor of arrack. Therefore, the reliance placed upon Sub-clause (ii) of Clause (a) on behalf of the Mysore Sugar Co. Ltd. contending that it has purchased liquor and in turn sold to the buyers for the relevant period in question and therefore it was not required to collect tax at source from them is wholly untenable in law as the contractors who were buyers are not second purchasers as the said company has not purchased the arrack from the manufacturers but itself is a manufacturer and seller to the buyers. Insofar as Sub-clause (iii) of Clause (a) in respect of both the appellant-companies, the learned senior Counsel placed strong reliance for their exclusion from the applicability of Section 206C on account of exemption clauses referred to supra and therefore the buyers were not required in law to pay tax at source and the appellant Nos. 1 and 2 were not required to collect tax from them and remit to the Department. Sub-clause (iii) reads as hereunder:

A buyer where the goods are not procured by him by way of auction and where

the sale particulars of such goods to be sold by the Board it is fixed by or any other State Act.

The learned Judge in this regard had taken lot of pains by applying his mind analytically to the phrase occurred "obtained". That phrase is preceded by word "not" which has got very significant meaning not obtained by him by way of auction. Under Rule 3 of Rules of 1969, the right of retail vending was conferred upon the contractors/buyers during the relevant period is an undisputed fact. The provision of Rules expressly states regarding the procedure to be followed for grant of leasehold rights in favour of contractors to enable them to purchase the liquor of arrack from the appellant-companies for retail sale in the assigned areas of the State. It is not the case of both the appellants before this Court that the contractors did not purchase the goods of arrack from them in pursuant to the leasehold rights acquired by them participating in the public auction, if, that were to be the case, they could have produced the orders which were in their possession to show that the contractors/buyers have purchased the arrack by not following the procedure contemplated under Rule 3 of Rules, 1969. It is not their case that the buyers during the relevant period have not purchased the liquor of arrack by acquiring leasehold rights. The above relevant material facts were not pleaded in their reply by them and not produced documentary evidence in this regard before the AO or in these proceedings to show that the provisions of the Act are not applicable to them and the interpretation sought to be made by the learned senior Counsel with reference to the provisions of Sub-clauses (i) to (iii) of Clause (a) "buyer" of Section 206C of the Act to show that the contractors/buyers were exempted from the applicability of the above provisions of the Act. Both the appellants do not come under the purview of the Clause (a) exemption Sub-clauses (i) to (iii) despite the fact that the same was inserted by way of an amendment to the Finance Act of 1992 w.e.f. 1st April, 1992. The said clause of "buyer" for exemption from the applicability of Section 206C of the Act cannot be invoked by them, as they have not established the fact that the contractors/buyers did not get the arrack goods from the appellants. The Mysore Sugar Co. Ltd., is the manufacturer of arrack, therefore, the explanation of exemption of contractor from it falls within Sub-clause (ii) is also not tenable in law. The contentions urged by the learned senior Counsel on behalf of the appellant-companies is contrary to the statutory provisions of Section 206C including Explanation part of Clause (a) "buyer" and Sub-clauses (i) to (iii) to Sub-section (11) of the above section, as there is no ambiguity at all in understanding the phrases and words used under the provisions of Sub-clauses (i) to (iii) and therefore there is no need to interpret them. For the reasons stated supra we have to conclude that the contractors/buyers were not excluded by way of exemption from the payment of Income Tax to the Department for having obtained the goods from the appellant-companies. No doubt, on the basis of agreements executed by the contractors to the Excise Department of the State Government, contracts have been awarded in their favour by conferring leasehold rights to them for a period of one year to purchase the arrack

commencing from July to 30th June of every succeeding financial year and they have obtained arrack for vending in retail from the appellant-companies who are the manufacturers of liquor for the period in question is not disputed. The learned senior Counsel placed strong reliance upon various decisions of Himachal Pradesh, Punjab and Haryana, Gauhati, Madhya Pradesh and Madras High Courts and the decision of the Supreme Court in the case of Union of India and Another Vs. Om Prakash S.S. and Company and Another, in support of their legal contention to show that the contractors/buyers during the period in question were exempted from payment of tax u/s 206C of the Act, as they were excluded from the Explanation of "buyer" Clause (a) under Sub-clauses (i) to (iii) is of no assistance in view of the law laid down by the apex Court in the cases referred to supra regarding interpretation of the fiscal statutes of exemption provisions upon which the standing counsel for the Revenue had rightly placed reliance. In respect of the judgments referred to supra upon which the learned senior Counsel for appellant Nos. 1 and 2 has placed reliance, the learned single Judge with reference to the fact situation of those cases and the present cases as pleaded by the parties has carefully examined and considered with reference to the records and he had rightly distinguished the same and held that those decisions are not applicable to the case on hand. The object of conducting auction for awarding contracts in favour of highest bidders is also referred to in the impugned judgment. For the reasons stated supra we are in full agreement with the learned single Judge's conclusions and the findings recorded on the legal plea of applicability of Section 206C to the contractors/buyers regarding their liability that they were required in law to pay tax to the appellant-companies at source for the relevant period. We find that the AO is right in passing assessment orders against the appellant-companies after considering their replies.

31. He had also rightly observed that the AO had jurisdiction and power to initiate proceedings and passing orders of assessment against the appellant-companies. With reference to the entries in the Lists 1, 2 and 3 of Schedule VII of the Constitution of India which provides legislative powers to both Central and State Governments in the matter of levy of tax is concerned, the Parliament has enacted the law regarding imposition of Income Tax to be imposed upon the assesseees. Therefore the learned single Judge had rightly held that Excise Commr. should not have given directions/instructions by way of circulars to the manufacturers of liquor in the State stating that they need not collect Income Tax at source from the buyers without understanding the statutory provisions of Section 206C of the Act and he had acted arbitrarily without realizing the legal position that he is not the competent authority for issuing such circulars. The statutory obligations conferred on appellant-manufacturers under the provisions of Section 206C of the Act and corresponding statutory duty is cast upon the buyers regarding their liability of payment of Income Tax at source to the seller of the companies for sale of goods of arrack in their favour for vending in retail in the State at the rates fixed under the State Act and Rules. The provision of

Explanation regarding "buyer" by way of subsequent amendment was inserted to Sub-section (11) of Section 206C of the Act and therefore, the learned single Judge was right in rejecting the contention urged on behalf of the appellants No. 1 and 2 and has rightly held that the contractors/buyers of arrack goods for vending in retail for the period in question are liable to pay the Income Tax at source. In disputing the appellant-companies' statutory obligation under the provisions of the Act, they failed to collect the Income Tax at source from the contractors/buyers for the period in question on the plea taken by them is rightly rejected by the learned single Judge by recording valid and cogent reasons.

32. For the foregoing reasons we have to hold that there is a statutory liability upon the appellant-companies u/s 206C Sub-section (5) of the Act, hence the liability fastened upon it by the AO is perfectly justified after the Department has placed the demand upon them and after giving opportunity to them. Therefore, we have to answer the legal submissions made by the appellant-companies' counsel that Section 206C is not applicable to the contractors/buyers against them as the contention is wholly untenable in law, hence the same is liable to be rejected and accordingly rejected.

33. With regard to the jurisdiction of the AO, who had passed assessment orders against appellant-companies, the learned standing counsel has placed strong reliance to Sub-section (4) of Section 120 of the Act. The learned single Judge on this aspect no doubt has made certain observations stating that the appellants being public sector companies need not take this hyper-technical contention to escape from the statutory liability under the provisions of Act to the Department. In justification of the said finding the learned standing counsel on behalf of the IT Department had rightly placed reliance upon Section 120 Sub-section (4) of the Act. The above contention regarding jurisdiction of the AO as urged in the writ petitions were to be urged at the time of submitting their reply, then he could have referred the matter to the jurisdictional AO/CIT. The plea of lack of jurisdiction of AO was not taken in their replies is an undisputed fact. No doubt, that plea is taken in the writ, petition for the first time. The CIT under the provisions of Section 120 Sub-sections (1) and (2) of the Act Chief CIT has got the power to appoint various officers on the basis of areawise territorial jurisdiction by delegating his powers to them for the purpose of assessment of Income Tax of the assessee. In the instant case the notification produced as Annex. R3 dt. 6th July, 1998, the only contention urged with regard to jurisdiction of the AO is that in respect of the other officers their designations and the provisions of the Act for exercise of their jurisdiction was expressly specified under column Nos. 2 and 3, but against the name of the AO the provision of Section 206C of the Act is not mentioned and therefore he had no jurisdiction to pass assessment orders against the appellant-companies. This legal contention urged on behalf of the appellant-companies must fail for the reason that the power of Chief CIT is delegated to the AO for initiating proceedings and pass orders against the appellant-companies. Therefore, he had jurisdiction to pass the assessment orders against them regarding escaped

assessments, hence, the above contention of the appellants is not acceptable to us, and accordingly rejected as wholly untenable in law. The last ground urged on behalf of appellant's counsel namely that opportunity was not given to them to oppose the demand made by the Department also cannot be accepted by us for the reason that notices were given to them demanding them to pay tax for the period in question as they have not remitted the Income Tax at source as required in law. An opportunity has been given to them before passing the orders by the AO which they have not availed for which they cannot blame the Department. Their principal contention in their replies submitted to the demand notices served upon them by the AO was that Section 206C is not attracted to the fact situation and after perusal of the record, we have noticed that the AO has passed the impugned orders of assessment against them after taking into consideration their replies and also the provisions of the Act. It was incumbent upon the appellants to submit their tenable objections by producing the material documentary evidence to show that they are not liable to pay the tax amount as assessed by the AO. Since the remedy available to them as prescribed under the provision is not availed by them, their contention in these proceedings that they are not liable to pay the Income Tax is not tenable in law. Hence, this aspect of the matter does not call for consideration and the same has been rightly answered against them by us for the reasons recorded in this judgment by accepting the findings and conclusions arrived at by him on this contentious issue, For the foregoing reasons the contentions urged in this regard that the assessment orders passed are in violation of principles of natural justice is required to be rejected as there is no merit in this contention. Accordingly, it is rejected. We are in full agreement with the findings and reasons recorded by the learned single Judge in his order and the appeal must fail.

34. While parting with these cases, the observations made by the learned single Judge regarding adjusting the amount if any paid by the contractors to the Department for the relevant period covered in the impugned orders of assessment passed by the AO must be strictly adhered to by the Department. It is open to the appellant-companies to furnish such other particulars regarding payment of tax by the buyers to the Department. According to them, they have already furnished particulars regarding the payment of tax by the assesseees to the Department. Therefore, the Department must make necessary efforts to find out as to whether tax is paid by the buyers for the relevant period by submitting returns. We trust and believe that the Department will make sincere efforts to find out whether the tax paid by the buyers if, any to the Department in accordance with the terms of the contract even though they have not remitted to the appellants/companies at the time of obtaining the goods of liquor during the period in question, If such payments are already made by the buyers and if the records are available in the IT Department, the same shall be taken into account and deducted out of the assessment orders; to that extent relief may be given to the appellants.

35. With the above observations, we affirm the orders passed by the Dy. CIT and

also the order of the learned single Judge in dismissing the writ petitions. Liberty is also given to both the appellants to submit other documents if any, to show that tax has been paid by the contractors/buyers to the IT Department at source to show that they have paid tax for the relevant period to which period the assessment orders are made by them against the appellant-companies.