

(2000) 02 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 15583 and bunch of 1999 and Civil Miscellaneous No's. 26381 of 1999, 2835 and 2846 of 2000 22 February 2000

NARESH KUMAR and CO. and Others

APPELLANT

Vs

UNION OF INDIA and Others

RESPONDENT

Date of Decision : 22-02-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 206C, 44AC

Citation : (2000) 160 CTR 81

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

Bench : Full Bench

Advocate : Mohan Jain with Rakesh Aggarwal, for the Assessee R.P. Sawhney with Rajesh Bindal, C.L. Sharma and Ashok Arora, for the Revenue, for the Appellant;

Judgement

N. K. Sodhi, J.

The questions that arise for our consideration in this bunch of twenty-four writ petitions are whether the holder of L-14A licence issued under the Punjab Liquor Licence Rules, 1956 (hereinafter referred to as the Rules) is a "buyer" within the meaning of section 206C of the Income Tax Act, 1961 (hereinafter referred to as the Act), and whether the Excise Department while auctioning such a licence is a "seller" and as such required to collect from such a licensee 10 per cent of the amount of licence fee as Income Tax ? Facts giving rise to these questions are identical and counsel for the parties are agreed that the decision in Civil Writ Petn. No. 15583 of 1999 will govern the other cases as well. For the sake of convenience, the facts are being taken from this case.

2. Petitioners are holding L-14A licences issued to them by the Excise Department of the Union Territory, Chandigarh, for the year 1999-2000. The mode of grant and the authority to grant the renew such licences is mentioned in

rule 1 of the Rules, according to which, L- 14A licence is granted to a retail vend of country spirit for human consumption off the premises, by way of auction or negotiations. The petitioners were granted the licences in an open auction held for the purpose in which they were the highest bidders. The State charges on monthly basis a licence fee for the grant of this privilege of selling liquor by the wine contractors like the petitioners. This licence enables the licensee to purchase country liquor from the distilleries (manufacturers) or from the wholesalers who also hold L-13 licence for wholesale vend of country spirit. It is common case of the parties that the petitioners before us had been purchasing country liquor from the wholesalers (L-13 licensees). Before the country liquor can be purchased, a permit is necessary to be obtained from the Excise & Taxation Department for a certain quantity after depositing the excise duty thereon in the Government treasury. Then, on the production of this permit, the wholesalers after charging the price sell and allow the release of liquor to the L-14A licensees like the petitioners for further sale at the vend. The wholesalers purchase the country liquor from the distilleries and sell the same to the L-14A licensees at a period fixed by the State Government under the Punjab Excise Act and the Rules without any bargain or negotiations. L-14A licensees then sell the country liquor in retail at their vends. It is thus clear that the petitioners pay the price of country liquor to the wholesalers which includes the cost of liquor and the container. Since the Excise and Taxation Commissioner, Chandigarh, while granting L-14A licences to the petitioners did not regard them as buyers within the meaning of section 206C of the Act nor did he regard himself as the seller of any goods, he did not collect from the petitioners 10 per cent on the amount of licence fee deposited by them for the period 1-4-1999, to 30-6-1999, as Income Tax at source. The Dy. Commissioner, Circle-1 (2) (TDS), Chandigarh, was, however, of the view that the petitioners while obtaining their L-14A licences in an auction had obtained the right to receive alcoholic liquor for human consumption other than Indian made foreign liquor and were, therefore, buyers within the meaning of section 206C of the Act and that the Excise & Taxation Commissioner who granted those licences was the seller. Every seller in terms of section 206C of the Act is required to collect 10 per cent of the amount payable at the time of the sale as Income Tax at source but since the Excise & Taxation Commissioner, Chandigarh, had not collected the said amount, the Deputy Commissioner issued notice to him and by a detailed order, dated 15-10-1999, held him liable to pay Income Tax to the tune of Rs. 97,09,050 to the credit of the Central Government as provided in clause (6) of section 206C of the Act. The Deputy Commissioner held that L-14A licensees like the petitioners who obtain the right to receive the specified goods mentioned in the table in sub-section (1) of section 206C of the Act fall within the purview of the definition of buyer and were liable to pay 10 per cent as Income Tax on the amount of licence fee deposited by them every month. It was further held that the Excise & Taxation Commissioner was the seller. On receipt of the order from the Income Tax Department the Dy. Excise & Taxation Commissioner Chandigarh, issued notices to the petitioners, dated 27-10-1999, requiring them to deposit 10 per cent of

the amount of licence fee deposited by them as Income Tax in respect of their country liquor vends for the period 1-4-1999 to 30-6-1999. They were further directed to deposit 10 per cent Income Tax at source u/s 206C of the Act along with the monthly licence fee payable in future. It is against these notices that the present petition has been filed under article 226 of the Constitution.

3. The relevant part of section 206C of the Act with which we are concerned in these cases is reproduced hereunder for facility of reference :

"206C(1). Every person being a seller shall at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods or the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of that said Table of such amount as income tax

Table

Sr. No.

Nature of goods

Percentage

(1)

(2)

(3)

(i)

Alcoholic liquor for human consumption (other than Indian made foreign liquor) and tendu leaves

Ten per cent

(ii)

Timber obtained under a forest lease

Fifteen per cent

(iii)

Timber obtained by any mode other than under a forest lease

Five per cent

(iv)

Any other forest produce not being timber or tendu leaves

Fifteen per cent:

Provided that

(2) The power to recover tax by collection under sub-section (1) shall be without prejudice to any other mode of recovery.

(3) Any person collecting any amount under sub-section (1) shall pay within seven days the amount so collected to the credit of the Central Government or as the Board directs.

(4)

xx

xx

xx

(5)

xx

Xx

xx

(5A)

xx

Xx

xx

(5B)

xx

Xx

xx

(5C)

xx

Xx

xx

(6) Any person responsible for collecting the tax who fails to collect the tax in accordance with the provisions of this section, shall, notwithstanding such failure, be liable to pay the tax to the credit of the Central Government in accordance with the provisions of sub-section (3).

(7) Without prejudice to the provisions of sub-section (6) if the seller does not collect the tax or after collecting the tax fails to pay it as required under this

section, he shall be liable to pay simple interest at the rate of two per cent per month or part thereof on the amount of such tax from the date on which such tax was collectible to the date on which the tax was actually paid.

(8) to (11)

Xx

Xx

xx

Explanation : For the purpose of this section :

(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;

(b) "seller" means the Central Government, a State Government or any local authority or corporation or authority established by or under a Central, State or Provincial Act, or any company, or firm or co-operative society."

4. Alcoholic liquor for human consumption other than Indian made foreign liquor is one of the goods specified in the Table referred to in section 206C of the Act and, therefore, this provision would apply to such goods.

5. 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 "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. Petitioners before us who are L-14A licensees to 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 are defined in section 206C with the result that person who fall in any of

those 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. Petitioners before us undoubtedly purchase 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 second sale covered by the exclusion 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 clause (1) of section 206C of the Act.

6. 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 the learned counsel 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, 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. The 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 the 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 wholesalers who are L-13 licensees.

7. Now coming to the judgment of Patna High Court in *State of Bihar's* case (supra). 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 206C of the Act as were introduced by the Finance Act, 1992, with effect from 1-4-1992, 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's* case (supra) and observed that that 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's* case (supra).

8. Before concluding on this aspect, we may also refer to Circular No. 660, dated 15-9-1993 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. Petitioners who buy country liquor at a second or subsequent sale thus stand excluded. It must, therefore, be held that they are buyers in further sale of those goods and are excluded by clause (ii) of clause (a) of the Explanation, the first sale being the sale made by the distilleries (manufacturers) to the wholesalers.

9. There is yet another aspect of the matter. The Deputy Commissioner has held that the Excise & 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 & 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 licences only give a right to the petitioners 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.

10. We may now examine the matter from another angle as well. Sub-section (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 case before us the amount which the petitioners pay to the wholesalers 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 buyers 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 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. 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 a licensee to the State Government. The Deputy Commissioner was in error in including the licence fee in the amount payable u/s 206C of the Act and the Excise & Taxation Commissioner was not required to deduct 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.

In the result, the writ petitions are allowed and the impugned notices issued to the petitioners requiring them to deposit 10 per cent of the licence fee as Income Tax are quashed, There is no order as to costs.