
(2013) 05 AHC CK 0331

In the Allahabad High Court

Case No : Writ Petition No's. 2822, 2823 and 3417 (MB) of 2002

Sankatha Shukla

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:

Income Tax Act, 1961 — Section 206C

Citation : (2014) 362 ITR 444 : (2013) 216 TAXMAN 294

Hon'ble Judges : Rajiv Sharma, J;Arvind Kumar Tripathi, J

Bench : Division Bench

Advocate : Sudeep Kumar, for the Appellant; Gaus Beg, for the Respondent

Final Decision : Disposed Of

Judgement

1. Heard Sri Sudeep Kumar, learned counsel for the petitioners and Mr. Gaus Beg, learned Counsel for Daurala Sugar Works. As all the petitioners are Retail Vendors in the districts Lucknow, Sitapur and Pratapgarh and were holding valid licenses at the relevant time granted by the Government of Uttar Pradesh under the provisions of U.P. Excise Act, 1910, all the writ petitions decided by a common judgment.

2. Grievance of all the petitioners is that the opposite parties are deducting Tax Collected at Source u/s 206-C of the income tax Act, 1961, therefore they preferred their respective writ petitions for a direction to the opposite parties to restrain them from collecting Tax at the time of purchase of country liquor by the petitioners.

3. The crux of the matter is that the opposite parties had obtained CL-2A licenses from the Government of Uttar Pradesh under U.P. Excise Act, 1910 and Rules made there under after payment of requisite license fee for the financial year 2002-03 to operate country liquor godowns in different districts in Uttar Pradesh. The liquor is sold by M/s. Daurala Sugar Works from its godowns to various Retail Vendors (petitioners) in the respective districts who hold CL-5A Licences granted

by the Government of Uttar Pradesh under the provisions of U.P. Excise Act, 1910 and Rules made there under. Though the Retail Vendors are bound to observe a number of restrictions as per terms and conditions of licences, yet the opposite party No. 2 while raising the invoices had collected the tax @ 10% on the value of invoice purporting to be u/s 206-C of the income tax Act, 1961.

4. The contention of the learned Counsel for the petitioners is that the petitioners have obtained the licenses under the U.P. Excise Act, 1910 and the Maximum Retail Price has been fixed by the Excise Commissioner in exercise of powers conferred on him u/s 41(e) (iii) of the U.P. Excise Act, 1910. Therefore, the provision of collecting tax shall not apply. Further, the Maximum Retail Price of the Country Liquor has been fixed by the Excise Commissioner u/s 41(e) (iii) of the U.P. Excise Act, 1910. Thus, the petitioners are excluded from the provisions of Section 206-C in view of the Explanation (a) (iii) and the petitioners cannot be termed as "buyer" in view of the definition of buyer given in Section 206-C itself.

5. Learned counsel for the petitioners further submitted that since the petitioners did not get a right to carry-on trade on the basis of auction and more particularly sale price has been fixed by the Excise Commissioner, no tax can be collected at source by the opposite parties, which is clearly in violation of sub-clause (iii) of clause (a) of the Explanation to section 206-C of the income tax Act, 1961.

6. Further, he submits that the Apex Court while dismissing the SLP against the order of the Punjab and Haryana High Court held that the licenses issued by the Government permitting the licensee to carry-on liquor trade is not attracted, as the licensee does not fall within the definition of "buyer" as referred in Section 206-C of the Act.

7. Learned Additional Chief Standing Counsel does not dispute the aforesaid legal proposition.

8. While entertaining the writ petitions, a Coordinate Bench of this Court vide order dated 22.5.2002 provided that in view of the decisions in the cases of Saini and Co. and Others Vs. Union of India (UOI) and Others, , K.K. Mittal and Co. Vs. Union of India (UOI) and Others, and Union of India and Another Vs. Om Prakash S.S. and Company and Another, , no tax would be deducted at source from the petitioners u/s 206(C) of income tax Act till the next date of listing.

9. Before proceeding, we would like to mention that Union of India through Commissioner of income tax (II), Lucknow, has been arrayed as one of the opposite parties, but in spite of long lapse of time and opportunities, no counter-affidavit has been filed. Therefore, the assertion of the petitioners remained uncontroverted.

10. Since no counter affidavit has been filed, this Court is treating the averments made in the writ petition as uncontroverted in view of the decisions of Hon'ble the Supreme Court in Choksi Tube Company Ltd. Vs. Union of India (UOI) and Others, and Smt. Naseem Bano Vs. State of U.P. and others, , wherein the Apex

Court has laid down the law that where a plea taken is not controverted in reply, it amounts to admission of the plea.

11. According to provisions of Section 41 of the U.P. Excise Act, the Excise Commissioner is empowered to make rules with the previous sanction of the State Government. Relevant portion of Clause 41(e) (iii) is reproduced as under:-

41(e) Prescribing the restrictions under and the conditions on which any license, permit or pass may be granted, including provisions for the following matters:-

(iii) the fixing of the strength price or quantity in excess of or below which any (intoxicant) shall not be sold or supplied, and of the quantity in excess of which denatured spirit shall not be possessed, and the prescription of a standards of quantity for any (intoxicant).

12. The Explanation to the provisions defines the word "buyer" mentioned in Section 206-C of income tax Act reads as under:-

(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.

13. In the case of Chandigarh Distillers and Bottlers Ltd. and Patiala Distilleries and Manufacturers Ltd. Vs. Union of India and Others, , it held as under:-

For the foregoing reasons, the petition deserves to be allowed and is accordingly allowed. We reiterate the ratio laid down in Gian Chand Ashok Kumar and Company and Others Vs. Union of India (UOI) and Others, and overrule the decision in Rudra and Company, Madan Lal and Company and Raj Kumar and Company Vs. Union of India (UOI) and Others, . We declare that the persons holding L-13, L-13A licenses cannot be said to be "buyers" and the provisions relating to deduction (collection?) of tax at source do not apply to them. Consequently, the letter dated June 16, 1998 (Annexure R3-1), must be held to be illegal and contrary to law and the respondents are permanently restrained from deducting any amount towards tax at source.

We respectfully agree with the reasoning of the Full Bench of the Himachal Pradesh High Court and do not find any reason to make a departure from the consistent view taken by this Court in K.K. Mittal and Co. Vs. Union of India (UOI) and Others, ; Satya Pal Amrik Singh and Co. and Others Vs. Union of India (UOI) and Others, and Naresh Kumar and Co. and Others Vs. Union of India

(UOI) and Others, . The propositions of the law laid down in the two cases of K.K. Mittal and Co. Vs. Union of India (UOI) and Others, and K.K. Mittal and Co. Vs. Union of India (UOI) and Others, , have acquired finality because the special leave petitions filed by the Union of India were dismissed by the Supreme Court after hearing counsel for both the parties. In Satya Pal Amrik Singh and Co. and Others Vs. Union of India (UOI) and Others, as well as Naresh Kumar and Co. and Others Vs. Union of India (UOI) and Others, , the two Division Benches have held that persons holding L-14 and L-14A licenses do not fall within the definition of "buyer" and the holders of L-13 licenses cannot be treated as sellers qua those holding L-14 and L-14A licenses. Therefore, the demands created by respondent No. 3 against the petitioners by assuming that they had committed default in making deduction at source in terms of section 206-C can not be sustained.

14. In the case of Sir Shadi Lal Enterprises Ltd. Vs. Union of India (UOI) and Others, , this Court held that the assessee-petitioner was a company having distilleries under the licenses granted by the U.P. Excise authorities for manufacturing of potable alcohol. As per the revised policy, the distilleries could sell the liquor after obtaining a wholesale licence to the retailers holding valid licences at a price fixed by the State, and the retailers, in turn, had to sell the liquor at a price fixed by the State Government. While fixing the maximum sale price for wholesale, the retailers had to pay to the wholesaler the cost price, tax, excise duty and cess. During the course of the assessment proceedings, the ITO held that the provisions of Section 206-C applied to the assessee and he was a defaulter for not collecting the tax u/s 206-C. Accordingly, the ITO directed the petitioner to pay certain amount as income tax collectible and surcharge thereon. On revision, the Commissioner (Appeals) confirmed the order passed by the ITO. Against that order, the petitioner filed the instant writ petition on the ground that wholesale price fixed by the Government became minimum sale price of liquor for retailer licenses. Moreover, by the Circular of the CBDT dated 27.6.2002 maximum retail price fixed has been declared to be the sale price referable in the Explanation to Section 206-C and therefore, it was wholly misconceived on the part of the respondents to suggest that if the petitioner did not collect tax, the retailer licenses might evade payment of tax.

15. The Apex Court in the case of Om Prakash S.S. & Co. (supra) held as under:-

The reliance placed on the Explanation to sub-section (ii) of section 206-C is misplaced as is evident from what is stated here-in-above. "Buyer" would mean where a person by virtue of the payment gets a right to receive specific goods and not where he is merely allowed/permitted to carry on business in that trade. It is for this reason that we had earlier dismissed the Special Leave Petitions and any observations of the High Court not in consonance with this may be not strictly correct but the fact remains that on licences issued by the Government permitting the licensee to carry-on liquor trade the provisions of Section 206-C are not attracted as the licensee does not fall within the concept of "buyer"

referred to in that Section. Buyer has to be buyer of goods and not merely a person who acquires a licence to carry on the business.

16. In the instant case, all the petitioners, who are Retail Vendors, were granted license under U.P. Excise Act, 1910 at the relevant time and since the Maximum Retail Price was fixed by the Excise Commissioner in exercise of powers conferred on him u/s 41(e) (iii) of the U.P. Excise Act, 1910, petitioners are excluded from the provisions of Section 206-C in view of the Explanation (a) (iii) as petitioners cannot be termed as "buyer". Therefore, the aforesaid case laws are squarely covered in the case of the petitioners.

17. For the reasons and legal position as stated here-in-above, the demands created by the Assessing Authority against the distillery by assuming that they had committed default in not making deduction at source in terms of Section 206-C from the petitioners cannot be sustained and further the distillery who has been arrayed as one of the opposite parties in all the three writ petitions are restrained from deducting any tax at source in view of the provisions of income tax Act. With these observations, all the writ petitions are disposed of finally.