

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 26441 of 2014 (O&M)
Date of Decision: 12.05.2015

M/s Kudos Chemie Ltd.

..Petitioner

versus

Assistant Commissioner of Income Tax (TDS), Chandigarh.

..Respondent.

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE G.S.SANDHAWALIA.

Present : Mr. Akshay Bhan, Sr. Advocate with
Mr. Alok Mittal, Advocate, for the petitioner.
Mr. Yogesh Putney, Advocate, for the respondent.

S.J.VAZIFDAR A.C.J. (Oral)

The petitioner has sought a writ of certiorari to quash a show-cause notice dated 28/29.10.2014 issued by the respondent.

2. The notice dated 28/29.10.2014 alleged that the tax deducted by the petitioner of an amount of ₹ 1.04 crores had been deposited by it into the Central Government Account after the due date prescribed under the Income Tax Act, 1961 (for short 'the Act'). The petitioner was called upon to show cause why prosecution proceedings under section 276B of the Act be not launched against it.

3. We see no reason to interfere at this stage. The petitioner ought to reply to the notice. There are several issues which would require consideration while adjudicating the notice. The respondent would have to consider various factual aspects such as the dates on which the tax was deducted at source and the dates on which the same was paid into the Central Government account. If there is a delay as there probably is, the authorities would have to consider whether it was of such a nature as to warrant launching prosecution proceedings against the petitioner. The

apprehension that the authorities will, irrespective of the facts and circumstances of the case, launch prosecution proceedings, is not well founded. It is not in every case of default in complying with the provisions relating to the requirement of deduction of tax at source that a prosecution is liable to be launched. A view to the contrary is unsustainable.

4. Sections 276B and 279(1)(2) of the Income Tax Act, 1961 read as under:-

“[276-B. Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B.—If a person fails to pay to the credit of the Central Government,—

(a) the tax deducted at source by him as required by or under the provisions of Chapter XVII-B; or

(b) the tax payable by him, as required by or under,—

(i) sub-section (2) of Section 115-O; or

(ii) the second proviso to Section 194-B,

he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.]

279. Prosecution to be at the instance of Chief Commissioner or Commissioner.—[(1) A person shall not be proceeded against for an offence under Section 275-A, [Section 275-B], Section 276, Section 276-A, Section 276-B, Section 276-BB, Section 276-C, Section 276-CC, Section 276-D, Section 277 [, Section 277-A] or Section 278 except with the previous sanction of the Commissioner or Commissioner (Appeals) or the appropriate authority:

Provided that the Chief Commissioner or, as the case may be, Director-General may issue such instructions or directions to the aforesaid income tax authorities as he may deem fit for institution of proceedings under this sub-section.

Explanation.—For the purposes of this section, “appropriate authority” shall have the same meaning as in clause (c) of Section 269-UA.]

(1-A)

[(2) Any offence under this Chapter may, either before or after the institution of proceedings, be compounded by the Chief Commissioner or Director-General.]”

5. Sub section (1) of Section 279 provides that a person shall not be proceeded against for an offence under section 276B “*except with the previous sanction of the Commissioner or Commissioner (Appeals) or the appropriate authority*”. Thus, if there is no sanction from the Commissioner or Commissioner (Appeals) or the appropriate authority, a person cannot be proceeded against for an offence under section 276B. This indicates that launching a prosecution is not mandatory. Sub section (1) clearly contemplates cases where prosecution may not be launched though there is a failure as contemplated by section 276B.

6. Under the Proviso to section 279, the Chief Commissioner or, as the case may be, Director General ‘*may*’ issue such instructions or directions to the said authorities as he may deem fit for institution of the proceedings under this sub-section (1). The Chief Commissioner or the Director General is not bound to issue such directions. Thus, if the Commissioner or the Commissioner (Appeals) or appropriate authority do not grant the sanction, it is possible that Chief Commissioner or as the case may be the Director General may also not issue instructions for institution of the proceedings under sub section (1). This also establishes that launching a prosecution is not mandatory in every case of failure provided in Section 276B.

7. That it is not mandatory to launch prosecution proceedings is clearer still from sub section (2) of Section 279 of the Act which provides that any offence under the Chapter, which includes one under section 276B, may be compounded by the Chief Commissioner or a Director General “*before or after institution of proceedings*”. The authority to compound the offence before institution of the proceedings makes it abundantly clear that it is left to the discretion of the authorities concerned whether or not to institute prosecution proceedings in respect of an offence under section 276B of the Act. If the offence is compounded before institution of the proceedings there would be no question thereafter of instituting proceedings for a failure referred to in section 276B of the Act.

8. Even assuming, therefore, that there was an offence by the petitioner as alleged in the show cause notice, it is not necessary that the prosecution proceedings would be launched against it. It will be open, for the petitioner to contend that in the facts and circumstances of the case it ought not to be proceeded against for the alleged failure referred to in section 276B of the Act. It would also be open to the petitioner to apply to have the offence, if any, compounded. If the application is accepted, there would be no question of instituting prosecution against the petitioner.

9. These are issues, however, which must in the first instance be decided by the authorities under the Act. Interference with the show cause notice at this stage is not warranted. The apprehension that in the event of the respondents deciding to launch the prosecution they may do so immediately can be allayed by granting the petitioner reasonable time to adopt appropriate proceedings against the decision.

10. The writ petition is accordingly disposed of with a direction that in the event of the decision being adverse to the petitioner, the respondents shall not implement the same for a period of six weeks after the service of such order upon the petitioner. There shall, however, be no order as to costs.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S.SANDHAWALIA)
JUDGE

12.05.2015
'ravinder'

Whether to be referred to the reporter or not.	☒ Yes	No.
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