IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2016

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

W.P.No.9016 of 2002

and WMP.No.12222 of 2002

1.Mettur Chemicals Pothu
Thozhilalar Sangam,
Reg.No.SLM 379,
rep.by its Secretary
Errataipuliamarthur,
Raman Nagar (Post), Mettur Dam-3.
2.Mettur Chemical and Plastics Worker Union,
Reg.No.3161, (Affiliated to CITU)
rep.by its Secretary,
Mettur Dam-2.
3.Mettur Chemplast Thozhilalar Munnetra Sangam,
Reg.No.SLM 722, (L.P.F.) rep.by its Secretary,
Vaideeswara Nagar,
Raman Nagar Post, Mettur Dam 636 403.
4.M.Venkataraman .. Petitioners

Vs.

1.Union of India,
Ministry of Finance,
Department of Revenue,
(Central Board of Direct Taxes),
New Delhi.
2.The Management of Chemplast Sanmar Limited,
Plant No.I and III,
Ram Nagar, Mettur Dam 636 403,
Salem District.
3. The Chief Commissioner of Income Tax,
Chennai-34
(R3-impleaded as per suo motu order
dated 23.12.2008 in W.P.No.9016/2002) ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Manamus calling for the concerned records from the respondents relating to the impugned notification of the 1st respondent dated

25.09.2001 and the consequential notice dated 25.01.2002 issued by the 2nd respondent and quash the same in sofaras they seek to impose tax on accommodation given to the petitioner and similar other members of the petitioner union No.1 to 3 and consequently direct the respondents to refund the amounts already deducted under the impugned notification.

For Petitioners	:	Mr.Balan Haridas
For R1	:	Mr.T.Promadkumarchopra
For R2	:	M/s.M.P.Senthilkumar Ms.G.Suseela

O R D E R

The learned counsel appearing for the petitioner submits that the notification under challenge in the writ petitions has been upheld by the Hon'ble Apex Court in a decision reported in (2007) SCC 732, Arunkumar and Others vs. Union of India and Others, wherein, the relevant portion of the observation made by the Apex Court in respect of the impugned notification in paragraph-99 of the Judgment, which is extracted hereunder:

> For the foregoing reasons, we hold that though Rule 3 of the Rules cannot be held arbitrary, discriminatory or ultra vires Article 14 of the Constitution nor inconsistent with the parent Act [Section 17(2)(ii)], it is in the nature of 'machinery-provision' and applies only to the cases of 'concession' in the matter of rent respecting any accommodation provided by an employer to his employees. Whether or not Parliament could have in the exercise of legislative power created a 'deeming fiction' as to concession in the matter of rent in certain circumstances (for which we express no final opinion), no such deeming provision is found in the Act. It is, therefore, open to the assessee to contend that there is no 'concession' in the matter of accommodation provided by the employer to the employees and the case is not covered by Section 17 (2) (ii) of the Act.

2. In view of the same, this writ petition is closed as the issue does not survive for any consideration by this court. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkd
To
1.Union of India,
Ministry of Finance,
Department of Revenue,
(Central Board of Direct Taxes),
New Delhi.
2. The Chief Commissioner of Income Tax,
Chennai-34

+1cc to Mr.Balan Harider, Advocate, S.R.No.74606
+2cc to Mr.M.P. Senthilkumar, Advocate, S.R.No.74376
+1 cc to Mr. T. Pramodkumar Chopda, Advocate Sr.No.74374

mp(CO)
md(20/01/2017)

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