IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2016

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

W.P.Nos.181 & 182 of 2008
and M.P.Nos.1 & 1 of 2008

W.P.No.181 of 2008
Chemplast Distillery Employees Union
Reg.No.SAT/238
rep.by its President,
Chemplast IAP II,
Kadampuliyur 607 103. ...Petitioner

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,
   Alcohol Plant No.II,
   Kadampuliyur, Panruti Taluk. ...Respondents

W.P.No.182 of 2008

Chemplast Employees Union
(Reg.No.SLM 70)
rep.by its Secretary,
Raman Nagar Post,
Mettur Dam 636 403,
Salem District. ...Petitioner

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.II,
   Raman Nagar, Mettur Dam 636 403,
   Salem District. ...Respondents

Prayer in both W.Ps. : Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration declaring that Notification No.271/2007 dated 07.11.2007 issued by the 1st respondent imposing tax on housing accommodation provided by the 2nd respondent to its employees in terms of Section 17(2) of the Income Tax Act, 1961 will not apply to the employees mentioned in the Annexure to the writ petitions and consequently direct the 2nd respondent not to deduct tax on the housing accommodation provided to the employees mentioned in the Annexure to the writ petitions pursuant to its letter dated 24.11.2007.

For Petitioners (in both W.Ps.) : Mr.Balan Haridas

For R1 (in both W.Ps.) : Mr.T.Promadkumarchopra

COMMON ORDER

The learned counsel appearing for the petitioners submit that the notification under challenge in both the writ petitions have been appealed 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 of the Constitution nor inconsistent with the par Article 14 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, these writ petitions are closed as the issue does not survive for any consideration by this court. No costs. Consequently, connected miscellaneous petitions are 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.

SSK(CO)
RS(31/01/2017)

W.P.Nos.181 & 182 of 2008
and M.P.Nos.1 & 1 of 2008