IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.1634 of 2003
and WPMP Nos.408 and 2048 of 2003

Chemplast Employees Union
rep by its Secretary
Raman Nagar
Mettur Dam 636 403. ...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

Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari calling for the records from the respondents relating to the impugned notification of the first respondent dated 25.09.2001 and the consequential notice dated 25.01.2002, quash the same insofar as they seek to impose tax on accommodation given to all employees/Junior Management Cadre/Supervisory Staffs.

For petitioner : Mr.Balan Haridas

For R2 : Ms.A.Sushma Harini

O R D E R

This petition has been filed calling for the records from the respondents relating to the impugned notification of the first respondent dated 25.09.2001 and the consequential notice dated 25.01.2002, quash the same insofar as they seek to impose tax on accommodation given to all employees/Junior Management Cadre/Supervisory Staff.

2. Chemplast Employees Union is the petitioner before this Court. It is the case of the petitioner that the management of Chemplast Sanmar Limited, the second respondent, started deducting tax on perquisites from the salary of the employees, in terms of Rule 3 of the Income Tax Rules, 1962, as amended by the Income Tax (22nd) Amendment Rules, 2001 [hereinafter would be referred to as "2001 Rules"]

framed under Section 17(2) of the Income Tax Act, 1961. This has been challenged by the Union in this writ petition and at the time of admission, this Court by order dated 21.01.2003, in WPMP No.2048 of 2003 has granted interim stay for all the employees working in the second respondent Company. The second respondent filed an application for vacating the stay and the order dated 21.01.2003 was modified on 03.03.2003 to the effect that the second respondent should not deduct the tax on perquisites from the salary of only the members of the petitioner Union. Thus, the stay was restricted only to the members of the association, on account of which the employer made deductions from the salary of those who were not members of the petitioner's Union.

3. Today, when the matter was taken up for hearing, learned counsel for the petitioner fairly brought to the notice of this Court that, Rule 3 of 2001 Rules was challenged before the Supreme Court in Arun Kumar v. Union of India [2007 (1) SCC 732] and the Supreme Court upheld the validity of the Rule, of course with a small caveat. It may be relevant to quote para 99:

> 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 .

(emphasis supplied)

4. The learned counsel for the petitioner contended that in view of the above said judgment, this petition cannot be maintained, but however, he submitted that leave may be granted to the members of the Union to contend before the authorities that, there is no concession in the matter of accommodation provided by the employer and that the case is not covered by Section 17(2)(ii) of the Act.

5. Learned counsel appearing for the second respondent conceded the legal position, but qualified by saying that in the year 2009, Rule 3 which is the bone of contention in this writ petition was amended with effect from 01.04.2009, pursuant to which, the second respondent applied the amended Rules to all the employees, including the members of the petitioner's association based on the amended Rules.

In view of the above, this petition is dismissed with liberty to the members of the petitioner Union to plead that there was no concession in the matter of accommodation provided by the second respondent employer and the case is also not covered by Section 17(2)(ii) of the Income Tax Act for the period from 2001-02 to 2008-09. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

gms

To

The Ministry of Finance
Department of Revenue
(Central Board of Direct Taxes)
New Delhi.

1 cc to Ms. Mallika Srinivasan, Advocate, sr. 72727
1 cc to Mr. Balan Haridas, Advocate, Sr. 72578

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RJ (CO)
kk 11/1