IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2017

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NO.27264 OF 2004
AND
W.P.M.P.NO.33163 OF 2004

Chemplast Distillery Employees Union (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 II, Kadmapuliyur,
Panruti Taluk. ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari after calling for the concerned records from the respondents relating to the impugned notification of the 1st respondent dated 25.09.2001 and quash the same in so far as they seek to impose tax on accommodation given to members of the petitioner/Union whose names are furnished in the * **Annexure** to writ petition.

*** Copy of Annexure attached**

For Petitioner : Mr.Balan Haridass

For Respondent-1 : Mr.A.N.Jayaprathap

For Respondent-2 : Ms.A.Sushma Harini

O R D E R

Heard Mr.Balan Haridass, learned counsel appearing for the petitioner, Mr.A.N.Jayaprathap, the learned Standing Counsel for the first respondent and Ms.A.Sushma Harini, learned counsel for the second respondent.

2. The learned counsel appearing on either side fairly stated that the issue involved in this Writ Petition was considered in an earlier Writ Petition filed by another Employees Union, viz., in Writ Petition No.1634 of 2003, and the said Writ Petition was dismissed with certain observations, by order, dated 09.12.2016. The operative portion of the order is read as under:-

> "Today, when the matter was taken up for hearing, the learned counsel for the petitioner fairly brought to the notice of the Court that, Rule 3 of 2001 Rules was challenged before the Supreme Court in Arun Kumar Vs. Union of India (2007 (1) SCC 732 and the Supreme Court upheld the validity of Rule, of course, with a small caveat. It may be relevant to quote para 99 :-
>
> > " For the foregoing reasons, we hold that though Rule 3of 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 applied 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 ''

4. The learned counsel for the petitioner contended that in view of the above said judgement, 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.""

3. Thus, following the above decision, the present Writ 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 in question. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsm

To

1. Union of India,
Ministry of Finance,
Department of Revenue,
Central Board of Direct Taxes,
New Delhi.

+1cc to Ms.A.Sushma Harini, Advocate, S.R.No.48288
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.48955

Writ Petition No.27264 of 2004

AR(CS III)
CS/03/08/17