IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.04.2018
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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.382 and 383 of 2006
And
W.P.M.P.Nos.437 and 439 of 2006

Mettur Chemicals and Plastics Workers
Union (Reg No.3161)
rep by its Secretary,
Mettur Dam 636 402
Salem District. ... Petitioner in W.P.No.382/2006

Chemplast Technical Staff Union
(Reg No.SLM 508)
rep by its Secretary,
Raman Nagar (Post)
Mettur Dam 636 403
Salem District. ... Petitioner in W.P.No.383/2006

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 in both the W.Ps.

Common Prayer:

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus after calling for the concerned records from the 1st respondent relating to the notification No.S.O.265 (E) dated 28.02.2005 issued by the 1st respondent, quash the same in so far as seeking to impose tax on accommodation given to the members of the petitioner union whose names are furnished in the annexure to the affidavit filed in support of the writ petitions and consequently direct the respondents to refund the amounts already deducted under the impugned notification and notice.

For Petitioner : Mr.Balan Haridas
In Both WPs

For Respondents : Mr.J.Madhanagopal Rao for R1
In Both WPs Dr.P.Vasudevan for R2

COMMON ORDER

These petitions have been filed seeking issuance of Certiorarified Mandamus after calling for the concerned records from the first respondent relating to the Notification No.S.O.265 (E) dated 28.02.2005 issued by the first respondent and to quash the same in so far as seeking to impose tax on accommodation given to the members of the petitioner union whose names are furnished in the annexure to the affidavit filed in support of the writ petitions and consequently, direct the respondents to refund the amounts already deducted under the impugned Notification and Notice.

2.Mettur Chemicals and Plastics Workers Union and Chemplast Technical Staff Union are the petitioners before this Court. It is the case of the petitioners 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 (22^{nd}) 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 these writ petitions and at the time of admission, this Court by order dated 05.01.2006, in W.P.M.P.Nos.437 and 439 of 2006 has granted interim stay in so far as the members of the petitioner union whose names are furnished in the annexure to the affidavit filed in support of the stay petitions. 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 petitioners 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 petitioners contended that in view of the above said judgment, these petitions 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 these writ petitions 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 petitioners' union based on the amended Rules.

6.In view of the above, these writ petitions are dismissed with liberty to the members of the petitioners 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, the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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+1cc to Mr.J.MADANAGOPAL RAO, Advocate, S.R.No.27148
+1cc to Mr.BALAN HARIDAS, Advocate, S.R.No. 27603

W.P.Nos.382 and 383 of 2006
And
W.P.M.P.Nos.437 and 439 of 2006

MR(CO)
TR(08/05/2018)