IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.07.2020
CORAM:
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
W.P.No.37193 of 2005
and
W.P.M.P.No.39815 of 2005

1.A.Jayakumar
2.M.Thangaraju
3.A.Chandramouli
4.R.Subramanian
5.K.Jeyabal
6.V.Sundararajan
7.P.Mahadevan
8.K.Karupusamy
9.G.Radhakrishnan
10.E.Thiagarajan
11.K.V.Kannusamy
12.K.Palaniappan
13.V.Sriraman
14.T.Karuppusami
15.R.Sridharan
16.S.Radhakrishnan
17.M.A.Vijayaragahavan
18.K.Syed Jaffer
19.C.Thirumurthi
20.L.Natarajan
21.S.Maharajan
22.S.Kannan
23.K.P.Ilango
24.K.Arumugam
25.A.Gunasekaran
26.M.Chandrasekaran
27.R.Palanisamy
28.G.Varadarajan
29.R.Radhakrishnan
30.S.Balasubramanian
31.K.Anbu Selva Kumar
32.K.Sampathkumar
33.R.Viswanathan
34.S.Balasubramanian
35.A.Varadharajan
36.K.S.Madhusudhanan
37.S.Siluvainathan
38.R.S.Viswanathan
39.V.Ammaiyappan
40.S.Nagarajan ... 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.II, Raman Nagar,
Mettur Dam 636 403.
Salem District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus calling for the concerned records from the 1st respondent relating to the impugned notification of the 1st respondent dated 25.09.2001 bearing S.O.940(E) of the 1st respondent and the amendment notification No.S.O.265(E) dated 28.02.2005 issued by the 1st respondent, quash the same in so far as they seek to impose tax on accommodation given to the petitioners and consequently direct the respondents to refund the amounts already deducted under the impugned notification and notice, award costs.

For Petitioners : Mr.Balan Haridas

For 1st Respondent : No appearance

For 2nd Respondent : No appearance

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O R D E R

Petitioners have come up with the present Writ Petition challenging the impugned Notification dated 25.09.2001 bearing S.O.940(E) and the amendment notification No.S.O.265(E) dated 28.02.2005, both issued by the 1st respondent, seeking to quash the same insofar as they seek to impose tax on accommodation given to them and consequently direct the Respondents to refund the amounts already deducted under the impugned Notification.

2. When the matter was taken up for hearing, learned counsel for the Petitioner submitted that, the issue involved in the case on hand is covered by an order dated 09.12.2016 passed by this Court in W.P.No.1634 of 2003 (Chemplast Employees Union

Vs Union of India) and that, the present Writ Petition may be disposed of on the same lines.

3. For better appreciation, relevant portion of the order dated 09.12.2016 passed in W.P.No.1634 of 2003 is extracted hereunder:

> 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 3 [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)
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> 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."

4. Following the ratio laid down by this Court in W.P.No.1634 of 2003 (Chemplast Employees Union Vs Union of India), this Writ Petition is dismissed with liberty to the Petitioner to approach the appropriate authority within a period of thirty (30) days from the date of receipt of a copy of this order. No costs. Consequently, connected W.P.M.P.No.39815 of 2005 is closed.

Sd/-
Asst.Registrar

/true copy/
Sub Asst. Registrar

(aeb)

To:

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

W.P.No.37193 of 2005
and
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