WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2021

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NOS.20355 TO 20358 OF 2017
AND
CRL.MP.NOS.12200 TO 12207 OF 2017

1. M/s. INDIAN INSTITUTE OF
   LOGISTICS PVT LTD.,
   (TAN : CHEI05939D)
   No.6, II Floor, South Indian Chamber of Commerce,
   Esplanade,
   Chennai - 600 108.

2. V.J.Pushpakumar,
   M/s.INDIAN INSTITUTE OF
   LOGISTICS PVT LTD.,
   K-12 III Floor, Swati Towers, Durgabai Deshmukh Road,
   R.A.Puram,
   Chennai - 600 028.

3. Kalpesh Rameshchandra Patel, Director
   M/s.INDIAN INSTITUTE OF
   LOGISTICS PVT LTD.,
   No.6, II Floor, South Indian Chamber of Commerce,
   Esplanade,
   Chennai - 600 108.

... Petitioners in all Crl.O.Ps

Vs.

P.K.Pradeep Kumar,
Income Tax Officer,
TDS Ward - 2(2)
Chennai - 600 034.

...Respondent in all Crl.O.Ps

Common Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and Quash the proceedings in E.O.C.C.No.141, 142, 143 and 144 of 2017, pending on the file of the Additional Chief Metropolitan Magistrate (EO-I), Egmore, Chennai.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

For Petitioners : M/s.M.Deivanandam

For Respondent : Ms.M.Sheela
Special Public Prosecutor
Income Tax Department
Assisted by Ms.M.Prarthana

COMMON ORDER

These petitions have been filed to call for the records and Quash the proceedings in E.O.C.C.No.141 to 144 of 2017, pending on the file of the Additional chief Metropolitan Magistrate (EO-I), Egmore, Chennai. The prosecution has been initiated against the petitioners for the offence u/s.276 B of the Income Tax Act, 1961.

2.The crux of the allegation that has been culled out from these petitions is that the petitioners after deducting TDS under various sections of Chapter XVII B of the Income Tax Act, 1961, from payments made to various parties, the petitioners instead of depositing the amount into the Government treasury within the due date, they have failed to pay the tax deducted at source to the credit of the Central Government within the prescribed time and have committed default u/s.200 and 204 r/w 30 of the Income Tax Rules for the assessment years 2011-12, 2012-13, 2013-14 and 2014-15, which is the subject matter of the above criminal original petitions and the prosecution proceedings in E.O.C.C.No.141,142, 143, 144 of 2017 has been initiated against them and the same is pending on the file of the learned Chief Metropolitan Magistrate, the Economic Offence-1, Egmore, Chennai for the alleged offence under 276B r/w 276B of the Income Tax Act 1961 for the FY 2011-12, 2012-13, 2013-14 and 2014-15.

3.Though the learned counsel appearing for the petitioners raised a jurisdictional issue in the last occasion and submitted that they are required committal proceedings, such submission has not been pressed into service. In view of the judgment of this Court in Crl.O.P.No.22137 of 2019 and Crl.O.P.No.1526 of 2020. The main submission of the learned counsel for the petitioners governed in the petition is that Section 276B provision does not speak on the delay about the payment of the tax, whereas 276 C (1) makes it clear that if a person willfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or (imposable, or under reports his income), under this Act, he shall without prejudice to any penalty that may be imposable on him under any other provisions of this act, be punishable.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

4.The absent of the word "due time" in 276B makes it clear that the mere delay in payment of tax is not an offence. Hence, he contended that in the absence of time fixed for payment of tax deducted from the source, a complaint cannot be lodged for prosecution. It is the further submission that the complaint is bereft of details as to the nature of delay and other aspects. Therefore, the entire complaint filed in this regard has to be quashed.

5.Mrs.M.Sheela, the Special Public Prosecutor, Income Tax Department appearing for the respondent submitted that the non payment of tax from the deducted sources itself is an offence and admittedly the payment has been made with a due delay. Therefore, merely because the time limit is not fixed as per 276B, it may not be said that the entire prosecution is not maintainable and to be quashed in the eye of law.

6.Heard both sides. Perused the materials on record.

7.At the outset, it is relevant to note that Section 200 of the Income Tax Act. Section 200 (1) makes it clear that any person deducting any sum in accordance with the provisions of the Act, shall pay the same to the Government treasury within the prescribed time and the amounts so deducted from the various parties to be credited to the Central Government as per the Board direction. The above provision makes it clear that the tax deducted from sources to be credited within the prescribed time as per the direction of the Board. The penal provision against delay in payment of tax within the time is also prescribed in 276 B. Therefore, the contention of the learned counsel for the petitioners in this regard cannot be countenanced.

8.As far as other submissions that the complaint is bereft of details, that it has not contained all the material particulars and minor details, this Court is of the view that the complaint is required basically for setting the criminal law in motion and it need not contain all the relevant details. It is for the prosecution to establish the alleged offence before the trial Court by adducing evidence. Hence, this Court is not inclined to entertain these petitions and there is no merit in the submissions of the learned counsel for the petitioners.

9.In the result, these Criminal Original Petitions are dismissed. It is made clear that these observations are made in the order only to decide these petitions. The trial Court shall conduct trial in a fair manner and decide the matter on merits and in accordance with law without being influenced by any of the observations made by this Court in this order and dispose of

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

the matter within a period of six months from the date of receipt of a copy of this order. It is open to the petitioners to take all the legal plea before the trial Court to contest the case.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

kas / dk

To

1. The Additional Chief Metropolitan Magistrate,
   Economic Offences – I,
   Egmore, Chennai.

2. The Income Tax Officer,
   TDS Ward – 2(2)
   Chennai – 600 034.

+4ccs to M/s.M.Deivanandam, Advocate, S.R.No.64085, 64086, 64087 and 64088

CRL.O.P.Nos.20355-20358/2017
&CRL.MP.Nos.12200-12207/2017

SMI(CO)
RLP(27/12/2021)

https://hcservices.ecourts.gov.in/hcservices/