IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.08.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR. JUSTICE G.ARUL MURUGAN**

W.P.Nos.41288, 41289 and 41290 of 2005
& W.P.M.P.Nos.44325, 44328 and 44330 of 2005

Mettur Chemicals Pothu
Thozhilalar Sangam,
Reg No.SLM 379,
rep by its President,
Errataipuliamarthur,
Raman Nagar Post,
Mettur Dam 636 403

... Petitioner in W.P.No.41288 of 2005

Chemplast Distillery Employees Union
Reg No.SAT/238,
rep by its President,
Chemplast IAP II,
Kadampuliyur 607 103,
Cuddalore District.

... Petitioner in W.P.No.41289 of 2005

Chemplast Employees Union
(Reg No.SLM 70)
rep by its Secretary,
Raman Nagar Post,
Mettur Dam 636 403
Salem District.

... Petitioner in W.P.No.41290 of 2005

Vs

1. Union of India,

Ministry of Finance,
Department of Revenue,
(Central Board of Direct Taxes),
New Delhi -

... Respondents in all W.P.'s

2. The Management of Chemplast Sanmar Limited,
   Plant No.I, III and IV,
   Raman Nagar, Mettur Dam 636 403.
   Salem District. ... Respondent in W.P.No.41288 of 2005

2. The Management of Chemplast Sanmar Limited,
   Alcohol Plant II, Kadampuliyur,
   Panruti Taluk,
   Cuddalore District. ... Respondent in W.P.No.41289 of 2005

2. The Management of Chemplast Sanmar Limited,
   Plant No.II,
   Raman Nagar, Mettur Dam 636 403.
   Salem District. ... Respondent in W.P.No.41290 of 2005

PRAYER in all W.P.s': Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus 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 petition and consequently direct the respondents to refund the amounts already deducted under the impugned notification and notice.

In all. W.P.'s
For Petitioner : Mr.Balan Haridas
For Respondents : Mr.A.P.Srinivasas (for R1)
Senior Standing Counsel
M/s.D.R.P.Vasudevan (for R2)

COMMON ORDER

(Order of the Court was made by Dr.ANITA SUMANTH,J.)

Heard Mr.Balan Haridas, learned counsel for the petitioners, Mr.A.P.Srinivas, learned counsel for R1 and Mr.Dr.P.Vasudevan, learned counsel for R2.

2. The petitioners, who are members of various Employees Unions, seek a writ of Certiorarified Mandamus calling for and quashing Notification No.S.O.265(E) dated 28.02.2005 issued by R1 insofar as it seeks to impose tax on perquisites by way of accommodation furnished to the employees who are members of the Unions.

3. All learned counsel would accede to the position that Rule 3 of the Income Tax Rules, 1962, as amended vide Income Tax (22^{nd}) Amendment Rules 2001, was challenged before the Hon'ble Supreme Court in *Arun Kumar V. Union of India* (2007 (1) SCC 732) and the validity of the Rule was upheld, in the following terms:

> *'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 the 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. Chemplast Employees Union had filed W.P.No.1634 of 2003, challenging Notification dated 25.09.2001 and this Court, by order dated 09.12.2016, had dismissed the Writ Petition granting liberty to the members of that Union to plead that there was no concession in the matter of accommodation provided by the employer and that the case was not covered by Section 17(2)(ii) of the Income Tax Act, 1961 for the periods 2001-02 to 2008-09.

5. The petitioner does not seek liberty similar to that granted to the members of the Chemplast Employees Union as the Writ Petition is of the year 2005, and no proceedings for assessment have been initiated thus far in their cases. This Writ Petition is hence dismissed with no order as to costs. Connected Miscellaneous Petitions are also dismissed.

(A.S.M.,J) (G.A.M.,J)
05.08.2024

sl
Index:Yes/No
Speaking order
Neutral Citation: Yes

To

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

Dr.ANITA SUMANTH,J
AND
G.ARUL MURUGAN,J.
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