

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Original Side

W.P. No. 1806 of 2005

M/s. Plymex Timber Pvt. Ltd. & Anr.

Vs.

Income Tax Officer (TCS)

with

W.P. No. 206 of 2013

Shree Shivam Metaliks Pvt. Ltd. & Anr.

Vs.

Income Tax Officer (TDS) Ward 59 (3) Kolkata & Ors.

with

W.P. No. 212 of 2013

Singh Suppliers Pvt. Ltd. & Anr.

Vs.

Income Tax Officer (TDS), Ward No.-59(3) Kolkata & Ors.

with

W.P. No. 745 of 2013

Shree Krishna Timber Co. Ltd. & Anr.

Vs.

Income Tax Officer (TDS), Ward – 59(3), Kol & Anr.

with

W.P. No. 746 of 2013

Singh Brothers Exim Pvt. Ltd. & Anr.

Vs.

Income Tax Officer (TDS), Ward – 59(3), Kolkata & Anr.

with

W.P. No. 748 of 2013

Silvertoss Industries Pvt. Ltd & Anr,

Vs.

Income Tax Officer (TDS), Ward – 59(3), Kolkata & Anr.

with

W.P. No 1061 of 2014

Devanshi Plyboard Industries Pvt. Ltd. & Anr.

Vs.

Income Tax Officer (TDS), Ward – 57(1), Kolkata & Anr.

with

W.P. No. 1063 of 2014

Shree Narayan Timber Company Pvt. Ltd. & Anr.

Vs.

Income Tax Officer (TDS), Ward – 57(1), Kolkata & Anr.

For the Petitioner : Mr. Soumyajit Dasgupta, Advocate
Mr. Sidhartha Sharma, Advocate

Ms. Namrata Basu, Advocate
Mr. Sanjoy Bhowmick, Advocate
Mr. Avra Mazumdar, Advocate
Mr. Ganesh N. Jajodia, Advocate

For the Respondent : Md. Nizamuddin, Advocate
Ms. Smita Das De, Advocate
Ms. Mamata Bhargav, Advocate
Mr. Prithu Dudhuria, Advocate
Mr. P.K. Bhowmick, Advocate

Hearing concluded on : February 25, 2019

Judgment on : March 27, 2019

DEBANGSU BASAK, J.:-

Eight writ petitions have been taken up for final hearing analogously as they involve the same issues. The petitioners in W.P. No. 1806 of 2005 are aggrieved by notices issued under Section 206C of the Income Tax Act, 1961. The other writ petitioners have challenged the constitutional validity of the amendment brought about by Section 81 of the Finance Act, 2012 with effect from July 1, 2012 with regard to the definition of the term “buyer” as appearing in clause (aa) of the explanation to subsection (11) of Section 206C of the Act, of 1961.

Learned advocate appearing for the petitioners has submitted that, the petitioners purchase processed/sawn timber from the domestic and international markets. The petitioners are not forest contractor licensed/authorised by the operation of law to enter into forest and fell down trees. The vendors from whom the petitioners purchased the timber are also not forest contractors who are licensed/authorised to enter into the forest and fell down trees. According to him, the definition of “buyer” as obtaining in Section 206C of the Act, of 1961 is onerous for the petitioners. Section 206C was introduced to the Act, of 1961 with effect from June 1, 1988. It required every seller of timber obtained under a forest lease or by any other mode, to collect tax at source at the percentage specified in the table under sub-section (1) of Section 206C of the Act, of 1961 from the consideration received or receivable from the buyer of such timber. According to him, timber referred to in Section 206C of the Act, of 1961 should be confined to timber obtained in the Indian forest within the territorial jurisdiction of the country to which the Act, of 1961 applies. Thus tax collection at source will not apply to

timber imported by the petitioner from outside India and sold thereafter as a seller of the same within the country. In support of such contentions, learned advocate appearing for the petitioners has referred to the budget speech of the Hon'ble Finance Minister of the Central Government made while presenting the union budget for the relevant year. He has referred to various passages of such budget speech. He has referred to the insertions made in Section 206C of the Act, of 1961 by Section 79 of the Finance Act, 1992. He has also referred to the amendments made to Section 206C of the Act of 1961 subsequent thereto. In particular, he has referred to amendments brought about in Section 206C of the Act of 1961 by Section 87 of the Finance Act, 2003 with effect from June 1, 2003 and by Section 81 of the Finance Act, 2012 with effect from July 1, 2012. According to the learned Advocate appearing for the petitioners, the legislative intent of the various provisions of section 260C of the Act of 1961 is to bring the forest contractors within the tax net. A buyer and seller of timber from the forest contractor are liable to pay tax. All other transactions are exempt

from taxation. The petitioners are outside the purview of section 206C of the Act of 1961. Any other interpretation would mean that, the word “timber” appearing in the table appended to sub-section (1) of section 206C of the Act of 1961 has to be read down. In support of the contention that, budget speech of the Finance Minister can be read to gather the legislative intent of a particular statute learned Advocate appearing for the petitioner has relied upon **All India Reporter 1981 Supreme Court 1922 (K.P. Varghese v. Income Tax Officer, Ernakulam and Ors.)**.

Learned advocate appearing for the petitioner has referred to the Central Board of Direct Taxes circular number 525 dated November 28, 1988 and submitted that, the legislative intent was to bring the Forest contractors as sellers and buyers of forest produce within the tax net and not retail purchase and sale of processed/sawn timber in the open market. According to him, the petitioners are resellers of the goods. Resellers of timber have been kept outside the scope and ambit of tax collection at source between the period 1992 till 2012. He has traced the

history of Section 206C of the Act of 1961 since it came into operation on June 1, 1988 till the last amendment thereof. According to him, the amendments brought about by section 81 of the Finance Act, 2012 are not backed by any authority. Such amendments are contrary to the legislative intent as originally propounded in 1988. It runs contrary to well founded and time-tested exemptions granted to resellers of timber. It creates unlawful and hostile discrimination. It leads to intra class discrimination without any intelligible differentia thereby violating Article 14 of the Constitution of India.

Learned advocate appearing for the respondents has submitted that, tax collection at source and tax deduction at source are not a tax like value added tax or Excise duty. Tax collected at source and tax deducted at source are collection of tax in advance at the generation level of a particular income of a particular person from a particular transaction which is later adjusted with the income tax liability of the collectee/deductee. He has highlighted the intentions of the legislature in bringing about provisions of tax collected at source and tax deducted

at source. He has submitted that, such provisions are in the larger interest of the general public and allows the government to meet the day to day expenditure of the country. Such provisions cannot be said to be unreasonable or violative of any provision of the Constitution of India.

Referring to the contention of the petitioners that, the petitioners are not liable to deduct tax at source, learned advocate appearing for the respondents has submitted that, the petitioners come within the definition of buyer as presently obtaining. According to him, reliance upon circular number 660 dated September 15, 1993 of Central Board for Direct Taxes and other similar circulars of Central Board for Direct Taxes are misplaced. No circular is above the statute. A circular can, at best clarify any provision of the statute, and cannot be treated as above the statute. In the present case, the subsequent amendments to the statute have rendered the circulars prior to such amendments irrelevant. Consequently, circulars of Central Board of Direct Taxes obtaining prior to the latest amendment to section 206C of the Act of 1961 are not relevant and applicable. According to him, as the definition

of “buyer” obtaining in Section 206C of the Act of 1961 stands, the petitioners are liable to collect tax at source and face any proceedings for their failure in not doing so. He has relied upon **All India Reporter 1996 Supreme Court 1219 (Union of India v. A. Sanyasi Rao)** and submitted that, the validity of section 44 AC and 206C of the Act of 1961 were challenged and that, the Hon’ble Supreme Court upheld such statutory provisions. Relying upon **All India Reporter 1992 Supreme Court 999 (Sri Srinivasa Theater & Ors. v. Government of Tamil Nadu and others)** learned Advocate appearing for the respondents has submitted that, Parliament is allowed more freedom of choice in matters of taxation laws in relation to other laws. Relying upon **326 Income Tax Reports 642 (SC) (Ajemera Housing Corporation & Anr. v. Commissioner of Income Tax)** learned advocate for the respondents has submitted that, a taxing statute has to be interpreted strictly. He has submitted relying upon **1970 (1) Supreme Court Cases 189 (Twyford Tea Company Limited & Anr. v. State of Kerela)** that, the burden to prove discrimination lies with the petitioners. In the facts of

the present case, the petitioners have not proved any hostile discrimination for the writ Court to intervene. Relying upon **1964 (1) Supreme Court Reports 29 (S.C. Prashar & Anr. v. Vasantsen Dwarkadas & Ors.)** learned Advocate appearing for the respondent has submitted that, where the language of the enactment is clear, there is hardly any need to go into the marginal note or the history of law of amendment. He has distinguished the ratio of the judgment relied upon by the learned advocate for the petitioners as not applicable to the facts of the present case. He has submitted that, the petitioners are not entitled to any relief as prayed for in the present writ petition.

The writ petitioner in W.P. No. 1806 of 2005 has challenged the notice dated June 23, 2004 issued under Section 206C of the Act of 1961. The seven other writ petitioners have challenged the constitutional validity of the definition of buyer in explanation (aa) to sub-section (11) of Section 206C of the Act of 1961 as coming into effect from July 1, 2012.

Section 206C of the Act of 1961 was inserted into the Act of 1961 with effect from June 1, 1988 by virtue of Section 40 of the Finance Act, 1988. It underwent several amendments subsequent thereto. Section 79 of the Finance Act, 1992 introduced an explanation after sub-section (8) of Section 206C of the Act of 1961. Insertions were made to sub-sections (9) to (11) of Section 206C of the Act of 1961 subsequently. Section 206C of the Act of 1961 underwent amendments in 2003 by virtue of Section 87 of the Finance Act, 2003 and in 2012 by virtue of section 81 of the Finance Act, 2012. As noted above, the Finance Act, 2012 introduced the explanation of buyer to sub-section (1) of Section 206C of the Act of 1961. The explanation of buyer as introduced by Finance Act, 2012 is as follows:-

“(aa) "buyer" with respect to—

(i) sub-section (1) means a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table in sub-section (1) or the right to receive any such goods but does not include,—

(A) a public sector company, the Central Government, a State Government, and an embassy, a High Commission, legation, commission, consulate and the trade representation, of a foreign State and a club; or

(B) a buyer in the retail sale of such goods purchased by him for personal consumption;

(ii) sub-section (1D) means a person who obtains in any sale, goods of the nature specified in the said sub-section;”

Explanation (aa)(ii) was deleted by the Finance Act, 2017 with effect from April 1, 2017. The explanation of “buyer” with respect to sub-section (1) of Section 206C of the Act of 1961 as it stands today is as follows:-

“(aa) "buyer" with respect to—

(i) sub-section (1) means a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table in sub-section (1) or the right to receive any such goods but does not include,—

(A) a public sector company, the Central Government, a State Government, and an embassy, a High Commission, legation, commission, consulate and the trade representation, of a foreign State and a club; or

(B) a buyer in the retail sale of such goods purchased by him for personal consumption;”

The constitutional validity of Section 206C was upheld in **A.**

Sanyasi Rao (supra). The same challenges as thrown in the present

writ petition were not there in **A. Sanyasi Rao (supra)** as, the explanation of “buyer” has been introduced to the statute subsequent to **A. Sanyasi Rao (supra)**. In my understanding, the challenges thrown by the petitioners in the present writ petition requires consideration. The petitioners cannot be non-suited on the strength of the ratio of **A. Sanyasi Rao (supra)** alone.

Sri Srinivasa Theater & Ors. (supra) has held that, fiscal statutes are not immune from attack based under Article 14 of the Constitution. However, Parliament and legislatures are accorded greater freedom and latitude, in the persons upon whom, and the situation and stages at which, it can levy tax. **Ajmera Housing Corporation & Anr. (supra)** has held that, a taxing statute is required to be construed strictly. There is no equity about a tax. In interpreting a taxing statute, the Court must squarely look at the words of the statute and interpret them. Considerations of hardship, injustice and equity are entirely out of place in interpreting a taxing statute. **Twyford Tea Company Ltd. & Anr. (supra)** has held that, the petitioners have to establish

discrimination and unequal treatment. The burden of proving discrimination is always heavy. It is heavier when a taxing statute is under attack. The petitioners must prove hostile unequal treatment and not merely possible inequality to succeed. **S.C. Prashar & Anr. (supra)** has held that, where the words of the statutes are clear, then there is hardly any need to look into the marginal note or the history of the amendment to interpret the statute.

In the present case, the word “buyer” as obtaining in Section 206C(1) of the Act of 1961 has been explained in explanation (aa). Section 206C comes under Chapter XVII of the Act of 1961. Chapter XVII of the Act of 1961 deals with collection and recovery of tax. It is divided into various sub-chapters. One of the sub-chapters is BB which deals with collection at source. Section 206C of the Act of 1961 comes under such sub-chapter BB dealing with collection at source. Section 206C of the Act of 1961 requires every person being a seller, at the time of debiting the amount payable by the buyer to the account of the buyer or at any time of receipt of such amount from such buyer, in cash or by

any negotiable instrument or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in Column 2 of the table appended to such section, a sum equal to the percentage specified in the corresponding entry in Column 3 of such table, of such amount as income tax. Essentially, it requires the seller to collect tax at source from the buyer. In the facts of the present case, the petitioners are involved in the business of trading in timber. As a trader, the petitioners partakes two characters. At a given point of time, the petitioners buy timber. As a buyer, it is obliged to pay tax to the seller of the timber. When the petitioners sell timber to a buyer, it is obliged to collect tax from the buyer. The petitioners come within the explanation of "buyer" as obtaining in Section 206C of the Act of 1961. What, when, whom and how much to tax is the domain of the legislature. A writ Court need not interfere therein unless it is substantiated that the statute breaches any constitutional provision. In the present case, Section 206C of the Act of 1961 obliges the petitioners, when they are buying timber to pay tax in advance and when selling to collect tax from

the buyer. These, payments and collections are subject to the relevant assessment. Therefore, none of the petitioners stand prejudiced in any manner. Requiring an assessee to collect tax on an incidence of taxation subject to final assessment cannot be said to be arbitrary. Circulars of Central Board for Direct Taxes will no doubt loose force on the statute undergoing subsequent amendments. The words used in Section 206C are clear. Therefore, there is no need to look into the legislative history or the marginal notes to interpret or understand Section 206C of the Act of 1961. **K.P. Varghese (supra)** has no manner of application in the facts of the present case. It cannot be said that, it is beyond the legislative competence of the legislature to legislate amendments to Section 206C so as to widen its area of applicability or modulate its applicability to suit the emerging needs of the society.

In such circumstances I find no merit in the writ petition.

W.P. No. 1806 of 2005, W.P. No. 206 of 2013, W.P. No. 212 of 2013, W.P. No. 745 of 2013, W.P. No. 746 of 2013, W.P. No. 748 of 2013,

W.P. No. 1061 of 2014, W.P. No. 1063 of 2014 are dismissed. No order as to costs.

[DEBANGSU BASAK, J.]

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