

**HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)**

MONDAY, THE TWENTY SIXTH DAY OF JULY
TWO THOUSAND AND TWENTY ONE

PRESENT

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T. VINOD KUMAR**

WRIT PETITION Nos.4834 and 15629 of 2020

WRIT PETITION NO: 4834 OF 2020

Between:

Telangana State Pollution Control Board, Hyderabad,
Rep. by its Member Secretary, Smt. Neetu Kumari Prasad.

...PETITIONER

AND

1. Central Board of Direct Taxes, North Block, New Delhi, rep. by its Secretary.
2. The Commissioner of Income-Tax, (Exemptions), Aayakar Bhavan, Basheerbagh, Hyderabad.
3. The Asst. Commissioner of Income-Tax, (Exemptions)-1, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ of Mandamus or any other similar or suitable writ order, or direction, directing the Respondents to notify the Petitioner Board for the purpose of Sec.10(46) of the I.T., Act pursuant to the application dt.7-3-2017 filed on 10-3-2017 by the Petitioner, with effect from the I.T. Assessment year 2016-17.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents not to enforce the collection of taxes levied on the petitioner for the income tax assessment years commencing from 2016-17 onwards, pending disposal of the above Writ Petition.

WRIT PETITION NO: 15629 OF 2020

Between:

Andhra Pradesh Pollution Control board, Hyderabad,
Represented by its Chairman, Shri B. S. S.Prasad,

...PETITIONER

AND

1. Central Board of Direct Taxes, North Block, New Delhi, Represented by its Secretary,
2. The Commissioner of Income Tax (Exemptions), Aayakar Bhavan, Basheerbagh, Hyderabad.
3. The Assistant Commissioner of Income Tax (Exemptions), Vijayawada.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ of Mandamus or any other similar or suitable writ order, or direction, directing the respondents to notify the petitioner Board for the purpose of Section 10(46) of the I.T. Act pursuant to the application dated 07/03/2017, filed on 08/03/2017 by the petitioner, with effect from the I.T. Assessment Year 2016-17.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents not to enforce the collection of taxes levied on the petitioner for the Income Tax Assessment Year commencing from 2016-17 onwards.

Counsel for the Petitioner in both W.Ps.: SRI. Y. RATNAKAR

**Counsel for the Respondents in both W.Ps.: SRI K. RAJI REDDY
(SENIOR SC FOR INCOME TAX)**

The Court made the following: COMMON ORDER

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T.VINOD KUMAR
WRIT PETITION Nos.4834 and 15629 of 2020

COMMON ORDER: *(per Hon'ble Sri Justice T.Vinod Kumar)*

By these two separate writ petitions, the petitioners are questioning the action of the respondents, in particular the 1st respondent, in not notifying the petitioners under Section 10(46) of the Income Tax Act, 1961 (for short, 'the Act'). Hence, these writ petitions are being disposed of by a common order.

2. The Telangana State Pollution Control Board (for short 'TSPCB') is the petitioner in W.P.No.4834 of 2020, while Andhra Pradesh Pollution Control Board (for short 'APPCB') is the petitioner in W.P.No.15629 of 2020.

3. Both the petitioners are constituted by the State Governments under Section 4 of Water (Prevention and Control of Pollution) Act, 1974 and Section 5 of the Air (Prevention and Control of Pollution) Act, 1981 and are established for the purpose of administering and controlling various steps relating to reduction of pollution and hazardous waste of all kinds, as per the statutory provisions of the said statutes.

4. It is the case of the petitioner-TSPCB that on its application, the prescribed authority viz., the 2nd respondent, granted approval under Section 10(23C)(iv) of the Act with effect from the Assessment Year 2014-15 onwards.

5. Similarly, it is the case of the petitioner-APPCB that the prescribed authority granted approval to it under Section 10(23C)(iv) of the Act with effect from the Assessment Year 2010-11 onwards.
6. It is the common case of the petitioners that though the petitioners were approved by the 2nd respondent and granted exemption under Section 10(23C) of the Act, the 3rd respondent denied the benefit of exemption on its income under the Act, for one or other reason and the matters are pending consideration in appeal before the appellate forum.
7. The petitioners contend that Parliament by the Finance Act, 2011, inserted sub-section (46) to Section 10 of the Act, with effect from 01.06.2011; that the said provision being more apposite to the activities carried on by the petitioners, the petitioners submitted applications dt.07.03.2017 and 08.03.2017, respectively, for being notified under Section 10(46) of the Act; that the petitioners satisfy the conditions specified under Section 10(46) of the Act; that similarly placed Pollution Control Boards of the other States, have been notified under Section 10(46) of the Act; and that despite the petitioners making applications for issue of notification under Section 10(46) of the Act, which would entail the petitioners to avail exemption on their income, the said request of the petitioners is not being considered and the petitioners are not notified under Section 10(46) of the Act.
8. Counter-affidavit on behalf of the respondents is filed opposing the claim of the petitioners.
9. Heard Sri Y.Ratnakar, learned counsel for the petitioners, and Sri K.Raji Reddy, learned Senior Standing Counsel appearing on behalf of the respondents.

10. The fulcrum of the petitioners contention is that in view of insertion of sub-section (46) to Section 10 of the Act with effect from 01.06.2011, the petitioners being i) established under Central Act, ii) Constituted by the State Government, iii) the activities carried on are for the benefit of general public, and iv) not engaged in any commercial activity, are eligible for being notified under Section 10(46) of the Act. The consequence of being notified under Section 10(46) of the Act, would make the petitioners entitled to claim exemption on its income under the Act.

11. It is also contended that the petitioners being instrumentality of State constituted to implement and enforce the provisions of Central enactment, they are entitled to immunity from Union taxation under Article 289 of the Constitution of India. It is thus, claimed that the petitioners having made applications to the 2nd respondent during the financial year 2016-17, they are required to be notified under Section 10(46) of the Act from the Assessment Year 2016-17 and on being notified, the petitioners would surrender the approval granted to them earlier under Section 10(23C) of the Act.

12. Opposing the contentions urged by the petitioners, on behalf of the respondents it is contended that the petitioners are not eligible to be notified under Section 10(46) of the Act, since the petitioners were already granted registration under Section 10(23C)(iv) of the Act, and the said registration is still in force; and that in view of the 18th proviso to Section 10(23C) inserted with effect from 01.04.2015, the benefit of approval under Section 10(46) of the Act would not be available. It is also contended that the claim of the petitioners with regard to the similarly placed Boards of other States being notified under Section 10(46) of Act, would attract the concept of "Zohnerism" (whatever that means), as

unlike other Pollution Control Boards, the petitioners are already registered under Section 10(23C)(iv) of the Act.

13. On 16.02.2021, when the writ petitions were taken up for hearing by this Court, the petitioners were granted time to file applications before 1st respondent seeking withdrawal of exemption granted under Section 10(23C) of the Act, and seeking for being notified under Section 10(46) of the Act with effect from the Assessment Year 2016-17. This Court further directed the 1st respondent to dispose of the said applications within a period of two weeks from date of its receipt and communicate the decision to the petitioners.

14. Pursuant thereto, the petitioners filed applications on 23.02.2021 seeking for withdrawal of exemption under Section 10(23C) of the Act and sought for being notified for exemption under Section 10(46) of the Act with effect from the Assessment Year 2016-17 onwards.

15. The said applications filed by the petitioners on 23.02.2021 were disposed of by the 2nd respondent by order dt.02.03.2021. By order dt.02.03.2021, the 2nd respondent, while holding that the approval granted under Section 10(23C)(iv) of the Act is in perpetuity, by referring to the clarification issued to 15th proviso to Section 10(23C)(iv), *vide* Circular No.7/2010 dt.27.10.2010, rejected the applications filed by the petitioners seeking withdrawal of approval granted to it under Section 10(23C)(iv) of the Act, on the ground that under the existing provisions of the Act, there is no provision for surrendering the exemption, once, it is granted.

16. The petitioners contend that the power to withdraw conferred on the proper authority is not only at the behest of the prescribed authority

who granted approval, but is also required to be exercised at the behest of an applicant, like petitioners. It is also contended that in the absence of any express restriction or prohibition imposed under the Act, for an applicant to approach the prescribed authority seeking withdrawal of approval granted, the claim of the 2nd respondent that exercise of such power being conferred only on the authority and cannot be exercised at the behest of the applicant, is discriminatory.

17. The petitioners further contend that the stand of the 2nd respondent that the exemption granted under Section 10(23C)(iv) of the Act, is in perpetuity, except for being withdrawn at the behest of the authority, is contrary to the statutory mandate and also powers conferred under Section 293C of the Act.

18. On the other hand, learned Senior Standing Counsel, while reiterating the stand of the respondents on the basis of the counter affidavit filed, would submit that as the grant of approval under Section 10(23C)(iv) of the Act, allows an assessee to avail exemption, being a benevolent provision, and such approval having been granted at the behest of the assessee, the petitioners/assessee cannot seek to surrender the exemption, once it is granted under a particular provision of the Act, and seek for grant of exemption under another provision of the Act, merely because it is more beneficial to it.

19. We have considered the submissions made by the learned counsel appearing for the parties.

20. Before adverting to the respective contentions advanced on behalf of the parties, it is necessary to take note of the Scheme of the Act, dealing with exemption under Section 10(23C)(iv) and 10(46) of Act.

21. Chapter-III of the Act deals with 'Incomes which do not form part of Total Income'. Section 10 of the Act provides that in computing the total income of a previous year of any person, any income falling within the clauses mentioned therein shall not be included. Sub-clause (iv) of Clause (23C) of Section 10 of the Act mentions that the income of any fund or institution established for charitable purposes (which may be approved by the prescribed authority) having regard to the objects and importance either throughout India or State or States, shall not be included in its total income. By Rule 2C of the Income Tax Rules (for short 'Rules'), the prescribed authority is specified as Principal Commissioner or Commissioner, whom the Central Board of Direct Taxes may authorize. The form prescribed for making applications for according approval under Section 10(23C)(iv) of the Act is in Form No. 56.

22. Firstly, it is to be noted that on grant of approval to an assessee under Section 10(23C)(iv) of the Act by the prescribed authority, assessee would be eligible to claim exemption in respect of certain incomes as not forming part of its total income. Upon the assessee making a claim, grant of exemption is not automatic or compulsory, but the same is subject to scrutiny and grant by the assessing authority. Thus, according of approval under Section 10(23C)(iv) of the Act by the prescribed authority, would not confer any benefit by itself. Such approval granted is like possessing an entry ticket for a circus show without a seat in first row.

23. Secondly, the stand of the respondents that the approval granted under Section 10(23C) of the Act, is in perpetuity and cannot be surrendered by the assessee, like the petitioners, also appears to be without any basis. No provision of the Act has been shown to this Court, expressly placing such a restriction on an assessee, from surrendering an

approval obtained, by approaching the prescribed authority, who thereafter can exercise powers conferred on him to withdraw such approval granted. In absence of any such provision in the Act, the claim of the respondents, that the power to withdraw can only be exercised by the prescribed authority in the circumstances specified, cannot be accepted.

24. Further, the reliance placed by the respondents on 15th proviso to Section 10(23C)(iv) of the Act, and the conditions specified therein to claim that exemption can be withdrawn by the prescribed authority only, is totally misplaced. Having regard to the usage of words namely "Provided also" in conjunction, the power conferred on the prescribed authority to withdraw the approval granted in the event of any one of conditions specified getting attracted has to be considered as 'in addition to', but not in a restrictive manner.

25. The word "Provided" has been defined as - "*A clause beginning with this word is usually termed a proviso. It may have various effects. Sometimes it is to be taken for a condition, sometimes for an explanation, sometimes for a covenant, sometimes for an exception, sometimes for a reservation*"¹. Similarly, the word "also" used in conjunction connotes a meaning. In *Samee Khan v. Bindu Khan*², the Hon'ble Supreme Court by referring to Black's Law Dictionary held that the word 'also' has variety of meanings like "Besides; as well; in addition; likewise; in like manner; similarly; too; withal".

26. Applying the meaning as ascribed to the above two words, used as opening words of 15th proviso to Section 10(23C)(iv) of the Act, it can be

¹ Advanced Law Lexicon by Sri. P. Ramanatha Aiyar, 3rd Edition, 2005.

² (1998) 7 SCC 59

inferred that the conditions specified therein relate to restriction imposed on the prescribed authority for exercising powers on his own. In **Re Chervirala Narayan**³ a Division Bench of this Court speaking through Hon'ble Sri Justice K. Subba Rao, C.J. (as his Lordship then was), while interpreting the provisions of Section 207-A(4) of Cr.P.C., had held that –
“*In our view, the word 'also' denotes the extent of power of the Magistrate rather than its limitation.*”

27. Further, the term 'withdraw' as used in Section 10(23C)(iv) 15th proviso and also in Section 293C of the Act has a wider connotation and cannot be construed in a restrictive manner as sought to be projected by the respondents. In **Kalabharati Advertising v. Hemant Vimalnath Narichania and Others**⁴, the Supreme Court held that the term "withdrawal" means 'to go away or retire from the field of battle or any contest.' Thus, the word "withdrawal' is indicative of the voluntary and conscious decision of a person.'

28. Applying the principles deduced from the above, to the facts of the case, it is to be held that the power to 'withdraw' is the prerogative of the respondent, and the assessee cannot seek to surrender the approval granted to it under 10(23C)(iv) of Act, would amount to giving a restrictive meaning to the word 'withdrawal', to say, only at the behest of the prescribed authority. This, in our considered view, would run contrary to the harmonious interpretation of the provision required to be undertaken.

29. On the other hand, if the stand of the respondents that once the exemption is granted, the same can only be withdrawn by the authority

³ AIR 1958 AP 235,239 = 1957 SCC Online AP 242

⁴ (2010) 9 SCC 437

granting exemption and such withdrawal cannot be sought by the assessee, is accepted, it might result in an assessee, who in a given situation having sought for grant of approval under Section 10(23C)(iv) of the Act, continuing to retain such approval, even though he is not complying with the provisions of the Act for availing exemption.

30. It is understandable, that in normal circumstances, as it is the assessee who would seek for grant of approval in order to avail exemption, may not by itself seek for 'withdrawal'. But, in a given circumstance where an assessee decides not to avail exemption and chooses to surrender the approval obtained by approaching the prescribed authority, it cannot be said that the Act does not provide for surrender, and also that the prescribed authority lacks power to accept surrender and exercise the power of withdrawal conferred on him. This interpretation results in the assessee being compelled to continue with such approval obtained.

31. It is to be seen that no assessee can be compelled to continue any exemption, if it intends not to avail the same. It is always open for an assessee to arrange its affairs in a manner which it feels it would be beneficial, and it cannot be compelled to continue its operations/activities in a particular manner which would be prejudicial to its interest. If the said stand of the respondent is accepted, it would lead to an anomalous situation and results in "Incentive to be Dishonest" rather than "Rewarding the Honest".

32. In juxtaposition, Section 10(46) of the Act confers powers on the Central Government to notify in the official gazette any specified income of a body or authority or Board or Trust or Commission, not being included in its total income, subject to complying with the conditions

specified therein. Thus, once a notification is issued by Central Government in official gazette, specifying the income of an assessee not forming part of total income, the assessee would be entitled to claim exemption on that specified income and no discretion would vest with the assessing authority to examine the eligibility of the assessee to claim exemption thereon.

33. Thus, the basic difference between the two provisions of the Act viz., 10(23C)(iv) and 10(46) of the Act, is that, while under the first provision, it is only a grant of an approval making an assessee eligible to claim exemption without any certainty of exemption being allowed on any income, since it is subject to scrutiny, the latter provision confers benefit of automatic exemption in respect of the specified income of the assessee as notified by the Central Government in the gazette. Thus, under Section 10(46) of the Act, there is a certainty with regard to claim of exemption.

34. The Supreme Court in *CCE v. Indian Petro Chemicals*⁵, held that – “if two exemption notifications are applicable in a given case, the assessee may claim benefit of the more beneficial one”.

35. In *H.C.L. Limited v. Collector of Customs*⁶, the Hon’ble Supreme Court relying on the judgement in *Indian Petro Chemicals (supra)*, held that – “where there are two exemption notifications that cover the goods in question, the assessee is entitled to the benefit of that exemption notification which gives him greater relief, regardless of the fact that the notification is general in its terms and the other notification is more specific to the goods”.

⁵ [1997] 11 SCC 318

⁶ [2001] 9 SCC 83

36. In the facts of the present case, though there are two different provisions of the Act under which the petitioners can claim the benefit, mere fact of petitioners being granted approval under one particular provision of the Act, namely Section 10(23C)(iv) of the Act, in our opinion, would not disentitle the petitioners/ assesseees to seek for being notified under a different provision, as it is for the assesseees/petitioners to choose as to which of the provisions would be more beneficial.

37. Further, it is also to taken note that the petitioners, while applying for exemption and seeking for being notified under Section 10(46) of the Act, also offered to surrender the approval obtained by it under Section 10(23C)(iv) of the Act on being notified. The respondents for the reasons best known did not take any action on the applications filed by each of the petitioners for being notified under Section 10(46) of the Act, nor communicated the reason for not considering the applications, for nearly three years, till the petitioners approached this Court by the present writ petitions. Thus, the action of the respondents in not processing the case of the petitioners and maintaining static silence, cannot be countenanced.

38. We may also refer to Section 293C of the Income Tax Act, 1961, which states:

"Where the Central Government or the Board or an income-tax authority, who has been conferred upon the power under any provision of this Act to grant any approval to any assessee, the Central Government or the Board or such authority may, notwithstanding that a provision to withdraw such approval has not been specifically provided for in such provision, withdraw such approval at any time:

Provided that the Central Government or Board or income-tax authority shall, after giving a reasonable opportunity of showing cause against the proposed withdrawal to the assessee concerned,

at any time, withdraw the approval after recording the reasons for doing so."

39. In our view, the reason assigned by the 2nd respondent in its communication dt.02.03.2021 to reject the request of the petitioners seeking withdrawal of the approval granted under Section 10(23C) of the Act, is also overlooking the power conferred on the said authority under Section 293C of the Act, even if it is construed that the 15th proviso confers power on the authority to withdraw only on the conditions stipulated therein. The understanding of the 2nd respondent that the power to withdraw conferred under Section 293C or Section 10(23C)(iv) of the Act, to be undertaken only at the behest of the respondents and not at the request of the petitioners, does not appeal to this Court, as a correct understanding. As detailed herein above, the word 'withdraw' as used in both the Sections 10(23C)(iv) and 293C of the Act, encompasses in itself the exercise of power even at the behest of the assessee/petitioners, and the contrary view of the respondents is liable to be rejected.

40. It is also to be seen that the petitioners have not sought for grant of exemption under Section 10(46) of the Act either from the day the said provision was introduced or from the date of their initial grant of approval under Section 10(23C) of the Act. The petitioners sought for being notified under Section 10(46) of the Act only from the relevant previous year, having regard to the fact that the benefit of exemption under Section 10(23C) of the Act, was being denied regularly, and they felt that the provisions of Section 10(46) of the Act are more beneficial and are applicable more aptly.

41. In view of the conclusions arrived at by us as above, the petitioners are liable to succeed in these writ petitions.
42. Accordingly, the writ petitions are allowed; the 2nd respondent is directed to withdraw the approval granted to the petitioners under Section 10(23C) of the Act with effect from the date of applications made by the petitioners for being notified under Section 10(46) of the Act; and process the petitioners' applications dt. 07.03.2017 and 08.03.2017 filed for being notified under Section 10(46) of Act in accordance with the provisions of the Act, from the previous year relevant to the date of applications, filed.
43. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

Sd/-K.SAILESHI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Secretary, Central Board of Direct Taxes, North Block, New Delhi.
2. The Commissioner of Income-Tax, (Exemptions), Aayakar Bhavan, Basheerbagh, Hyderabad.
3. The Asst. Commissioner of Income-Tax, (Exemptions)-1 Hyderabad.
4. 11 L.R. Copies.
5. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
6. The Secretary, Telangana Advocates Association Library, High Court for the State of Telangana at Hyderabad.
7. One CC to Sri Y. Ratnakar, Advocate [OPUC]
8. One CC to Sri K. Raji Reddy, Senior S.C. for Income Tax [OPUC]
9. Two CD Copies
10. One Spare Copy

CHR

HIGH COURT

DATED:26/07/2021

COMMON ORDER

WRIT PETITION Nos.4834 and 15629 of 2020



ALLOWING THE WRIT PETITIONS
WITHOUT COSTS

21
C. J. D. S.
05/08/2021