

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-17623-2016

Date of decision:- 07.12.2016

Amarjeet Beeton and another

...Petitioners

Versus

Commissioner of Income Tax (TDS), Chandigarh and
others.

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK SIBAL

Present:- Mr. Deepak Aggarwal, Advocate,
for the petitioners.

Mr. Denesh Goyal, Advocate,
for respondents No. 1 and 2.

None for respondents No. 3 and 4.

Ms. Radhika Suri, Senior Advocate,
with Ms. Rinku Dahiya, Advocate,
for respondents No. 5 and 6.

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S.J. VAZIFDAR, C.J. (ORAL)

The petitioners seek a writ of certiorari to quash a clarification dated 16.08.2016 issued by respondent No. 2 - Deputy Commissioner of Income Tax (TDS), Ludhiana stating that cotton waste is scrap within the meaning of the term under Section 206C of the Income Tax Act, 1961 (in short the Act) and that accordingly TCS (Tax Collection at Source) would continue to apply. Respondent No. 1 is the Commissioner of Income Tax (TDS), Chandigarh.

The petitioners also seek an order restraining respondents No. 3 to 6, who are private respondents and from

whom the petitioners purchase the goods, to stop collecting TCS on purchase of cotton waste.

Lastly, the petitioners seek an order directing respondents No. 1 and 2 to issue directions to all the mill owners such as respondents No. 3 to 6 not to collect tax at source on the payment made by the petitioners to the mill owners.

2. We see no reason to entertain this writ petition under the Act. There is uncertainty regarding the applicability of Section 206C of the Act to cotton waste. Section 206C(1) in so far as it is relevant reads as under:-

"206C. Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap etc. -

(1) Every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft 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 below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax:

Sr. No.	Nature of goods	Percentage
(vi)	Scrap	One per cent"

Explanation (b) to Section 206C defines scrap as follows:-

"(b) "scrap" means waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons."

3. The petitioners contend that the Madras High Court and the Gujarat High Court have decided the issue in their favour, although in respect of other parties. Respondent No. 3 sought a clarification in this regard from the department. Initially, a clarification was issued on 24.05.2016 stating that cotton waste is not covered under the definition of scrap contained in Section 206C(1) read with explanation (b). By a further communication dated 29.06.2016, the department stated as under:-

"Keeping in view the judgements and findings of the authorities (supra), it is made clear that no TCS applicability arises on the sale of cotton waste which is reused as raw material for manufacture of lower count of cotton yarn as it is not covered under the definition of the scrap u/s 206C(1) read with explanation (b) of the Income Tax Act, 1961. Further, in the case of scrap which cannot be used as such as raw material the liability under section 206C(1) arises. In other words, if scrap is being purchased by trader then the TCS should always be collected under the provisions of 206C."

This clarification is not absolute in terms. It contemplates the possibility of scrap which cannot be used being covered under Section 206C. The impugned communication dated 16.08.2016, however, states that cotton waste is scrap under Section 206C and the provisions thereof would apply. The communication states that the judgement of the Madras High Court in the case of The Commissioner of Income Tax Ward-1(3), Coimbatore Vs M/s Adisankara Spinning Mills (P) Ltd. (Madras) has not been accepted by the department. The statement that the matter is pending before the Supreme Court is, however,

admittedly incorrect. The matter referred to does not concern this issue. Be that as it may, as of now, the department has not accepted the contention.

4. The issue would require consideration by the authorities concerned. It would not be a pure question of law. It would be a mixed question of law and fact. There is no warrant for entertaining a writ petition when the petitioners can avail the remedy under the Act itself.

5. Mr. Goyal, learned counsel appearing on behalf of respondents No. 1 and 2 confirms that it is always open to the petitioners to seek a refund by filing appropriate returns under the provisions of the Act itself.

The learned counsel for the petitioners also relied upon a judgement of the Gujarat High Court in the case of The Commissioner of Income Tax (TDS) Vs M/s Priya Blue Industries Pvt. Ltd., (2016) 381 ITR 210.

6. This was also an appeal under Section 260A of the Act. The issue has not attained finality. We see no reason in that case to entertain this writ petition. The petitioner ought to be relegated to the remedy under the Act.

7. The writ petition is, therefore, dismissed with liberty to adopt appropriate proceedings.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(DEEPAK SIBAL)
JUDGE

07.12.2016

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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No