

when was it obtained and was relevant for which period of time. Affidavit, Exhibit P-9, of the Deputy Manager, Food Corporation of India, too does not mention that it possessed registration certificate for the relevant period.

(14) For the sake of argument, as already observed, even if the Corporation was possessed of a requisite certificate of registration, then too it cannot escape its liability *qua* the workers employed by a contractor unless it further established that the contractor employed by the principal employer possessed the requisite licence envisaged by section 12 of the Contract Labour Act. That the Corporation (petitioner) failed to establish, as already observed.

(15) For the reasons aforementioned, we find no merit in these petitions (C.W.P. No. 4384, C.W.P. No. 4857 and C.W.P. No. 4894 of 1986) and dismiss the same with no order as to costs.

S.C.K.

Before H. N. Seth, C.J. and M. S. Liberhan, J.

M/S LEADER VALVES (P) LTD.,—Petitioner.

versus

THE COMMISSIONER, INCOME-TAX, JULLUNDUR AND ANOTHER,—Respondents.

Civil Writ Petition No. 4378 of 1986.

April 13, 1987.

Income-tax Act (XLIII of 1961)—Sections 240, 241, 256(1)—Assessment framed—Tax deposited on the basis of such assessment—Annulment of assessment—Refund of tax paid—pendency of reference in High Court—Withholding of refund—Grounds for such withholding.

Held, that under Section 241 the Income-tax Officer is entitled to, with the prior approval of the Commissioner, withhold during the pendency of the reference made to the High Court under Section 256(1) of the Income-tax Act, 1961, the refund which became due to the petitioner, as a result of annulment of its assessment by

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the Income-tax Appellate Tribunal. A perusal of this section, however shows that such powers to withhold the refund cannot be exercised merely because some proceedings under the Act becomes pending. Before withholding the refund, the Income-tax Officer has also to form an opinion that the grant of refund is likely to adversely affect the Revenue. The section does not postulate that the grant of refund during the pendency of proceedings under the Act is an act which necessarily affects the Revenue adversely. The opinion whether the grant of refund during the pendency of some proceedings under the Act would adversely affect the interest of the Revenue, will depend upon the facts and circumstances of each case. The relevant file produced for perusal of the Court does not indicate that before directing the withholding of refund, the Inspecting Assistant Commissioner formed an opinion that granting of such refund would adversely affect the interest of the Revenue. It also does not appear that the previous approval of the Commissioner had been given after taking this aspect into consideration. The refund has been withheld merely because the Revenue was questioning the correctness of the decision of the Appellate Tribunal before the High Court. This circumstance by itself is not sufficient to authorise the income-tax authorities to withhold the refund of tax which had become due to the assessee.

(Paras 3 and 4)

Petition under Article 226 and 227 of the Constitution of India praying as under :—

- (i) *That the records of the case may kindly be called for.*
- (ii) *That after perusing the records and hearing the counsels for the parties, this Hon'ble Court may kindly be pleased to give the following relief:—*
 - (a) *Issue a writ in the nature of certiorari quashing the order at Annexure P-2 of the Inspecting Assistant Commissioner of Income-tax (Assessment) Range-II, Jullundur, dated 9th December, 1985.*
 - (b) *Order the release of the refund payable to the petitioner under Section 240 of the Income-tax Act, 1961.*
- (iii) *That any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may be issued.*
- (iv) *That any other relief to which the petitioner may be found entitled to in the facts and circumstances of the case may also be granted.*

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- (v) That the requirement of filing the certified copies of Annexure 1 and 2 may kindly be dispensed with.
- (vi) That the requirement of the serving of advance notice on the respondent may kindly be dispensed with.
- (vii) That the costs of the petition may kindly be granted in favour of the petitioner and against the respondent as it has been put to avoidable expenses at their hands.
- (viii) Further direct the respondents to allow the interest due to the assessee under Section 214, 243 and 244 (1-A) of the Income-tax Act.

N. K. Sood, Advocate, for the Petitioner.

Ashok Bhan, Sr. Advocate, Ajay Mittal, Advocate, with him, for the Respondents.

ORDER

(1) Income-tax assessment of the petitioner M/s Leader Valves Pvt. Ltd., Jullundur, for the assessment year 1980-81 was completed by the Income-tax Officer on 23rd September, 1983. Eventually, the petitioner took the matter up in appeal before the Income-tax Appellate Tribunal, which,—*vide* its order dated 9th July, 1985 annulled the assessment as being barred by time. Dissatisfied, the Revenue made an application under Section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as the 'Act'), requesting the Tribunal to state the case and refer the question regarding the assessment being barred by limitation, to the High Court for its opinion. The Tribunal,—*vide* its order dated 20th November, 1985, accepted the request made by the Revenue and stated the case referring the question of law for the opinion of the High Court, which is still pending consideration.

(2) The petitioner, had, for the assessment year 1980-81, paid a sum of Rs. 7,40,802 as Income-tax, which, as a result of annulment of assessment by the Appellate Tribunal, became refundable to it under Section 240 of the Act. When the Income-tax Authorities did not refund the said amount, the petitioner—*vide* its letter dated 20th July, 1985, requested the Inspecting Assistant Commissioner of Income-tax to do the needful. Thereupon, Assistant Commissioner wrote a letter dated 9th December, 1985, informing the petitioner

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that he had, with the prior approval of the Commissioner of Income-tax, withheld the refund due to it till the decision of the High Court to whom reference had been made, in exercise of the powers under Section 241 of the Act. Aggrieved, the petitioner has approached this Court for relief under Article 226 of the Constitution.

Section 241 of the Act runs thus :—

“Where an order giving rise to a refund is the Subject-matter of an appeal or further proceeding or where any other proceeding under this Act is pending, and the Income-tax Officer is of the opinion that the grant of the refund is likely to adversely affect the revenue, the Income-tax Officer may, with the previous approval of the Commissioner, withhold the refund till such time as the Commissioner may determine.”

(3) It is true that under this Section the Income-tax Officer is entitled to, with the prior approval of the Commissioner, withhold during the pendency of the reference made to the High Court under Section 256(1) of the Act, the refund which became due to the petitioner, as a result of annulment of its assessment by the Income-tax Appellate Tribunal. A perusal of this Section, however shows that such powers to withhold the refund cannot be exercised merely because some proceedings under the Act (the reference made under Section 256(1) of the Act) becomes pending. Before withholding the refund, the Income-tax Officer has also to form an opinion that the grant of refund is likely to adversely affect the Revenue. In our opinion, the Section does not postulate that the grant of refund during the pendency of proceedings under the Act is an act which necessarily affects the Revenue adversely. The opinion whether the grant of refund during the pendency of some proceedings under the Act would adversely affect the interest of the Revenue, will depend upon the facts and circumstances of each case.

(4) In the instant case, the communication dated 9th December, 1985, made by the Inspecting Assistant Commissioner to the petitioner, did not indicate that before withholding the refund, the Assistant Commissioner had applied his mind to the question as to whether or not the said refund would adversely affect the Revenue. Accordingly, this Court required the counsel appearing for the Income-tax department to produce the relevant file for its perusal. Mr. Ajay Mittal, Advocate, has produced the relevant file for our

perusal. The file does not indicate that before directing the withholding of refund, the Inspecting Assistant Commissioner formed an opinion that granting of the refund would adversely affect the interest of the Revenue. It also does not appear that the previous approval of the Commissioner had been given after taking this aspect into consideration. The refund has been withheld merely because the Revenue was questioning the correctness of the decision of the Appellate Tribunal before the High Court, in reference under Section 256(1) of the Act. As already explained, this circumstance by itself is not sufficient to authorise the Income-tax Authorities to withhold the refund of tax which had become due to the assessee.

(5) In order to justify the action of the Assistant Commissioner in withholding the refund, Mr. Ashok Bhan, learned counsel for the department, relied upon a decision of the Supreme Court in the case of *Andhra Pradesh State Road Transport Corporation v. Commissioner of Income-tax, A.P.* (1), wherein the Supreme Court upheld the order of the Income-tax Authorities withholding the refund, which became due as a result of High Court's decision, during the pendency of an appeal against the said decision before the Supreme Court. We find that in the aforementioned case, the validity of Section 241 of the Act was questioned on following two grounds :—

- (1) That the Income-tax Officer, even if it be with previous approval of the Commissioner, had no jurisdiction to render the judgment of the High Court ineffective on the ground that the appeal preferred by the Revenue against the judgment of the High Court was pending before the Supreme Court, or that the grant of the refund was likely to adversely affect the Revenue, and
- (2) That the Section conferred arbitrary exercise of power on Income-tax Officer and did not provide for any guidelines or classification, thereby offending Article 14 of the Constitution.

(6) The Supreme Court, after carefully considering the arguments, repelled both the submissions and held that the Section did not suffer from any vice of the nature urged before it. The question whether the Income-tax Officer can, under Section 241 of the

(1) (1975) 100 I.T.R. 401.

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Act, withhold a refund without forming an opinion regarding its adverse impact on the Revenue, and, merely for the reason that some proceedings under the Act is pending, was neither canvassed nor gone into. This case, therefore, does not help the submission made on behalf of the Revenue.

(7) In the result, the petition succeeds and the same is allowed. The order made by the Income-tax Authorities withholding the refund to the petitioner, as communicated to it,—*vide* letter dated 9th December, 1985, Annexure P-2 to the petition, is quashed.

S. C. K.

Before D. S. Tewatia and M. R. Agnihotri, JJ.

UNION OF INDIA,—Appellant.

versus

INDER SINGH,—Respondent.

Civil Misc. No. 1671-C II of 1986

in F.A.O. No. 48 of 1978

April 30, 1987.

Land Acquisition (Amendment) Act (LXVIII of 1984)—Section 30(2)—Appeal for reduction of compensation pending—No appeal by claimants for enhancement—Benefit of amending provision—Whether such claimant entitled to such benefit.

A perusal of provision of sub-section (2) of Section 30 of the Land Acquisition (Amendment) Act, 1984 would show that the Legislature intended to extend the benefit of the provisions of the Amending Act to the claimants upto a certain date in the past if by then, the compensation matter had not been finally disposed of by the Courts. If at the relevant time, the Court happens to be seized of the compensation matter, the Court would take into view the provisions of the Amending Act while determining the correct quantum of compensation, whether the Court was seized of the matter at the instance of the State, which had intended to reduce the quantum of compensation or it was seized of the matter at the instance of the claimants for having the quantum of compensation enhanced.

(Para 6).