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(14) I may mention that the finding in this appeal confirming the dismissal of the petition will be for the present time only. If subsequently the minor wishes to go with the mother and if a petition is filed by the mother in this regard, the above finding shall not come in her way.

In view of the above discussion, I find that there is no reason to disturb the finding of the court below. This appeal is, therefore, dismissed.

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**R.N.R.**

*Before N.K. Sodhi and N.K. Sud, JJ.*

M/S NARESH KUMAR AND CO. AND OTHERS,—*Petitioners*

*versus*

UNION OF INDIA AND OTHERS,—*Respondents*

C.W.P. No. 15583 of 1999

22nd February, 2000

*Constitution of India, 1950—Art. 226—Income Tax Act, 1961—S. 206-C—Punjab Liquor Licence Rules, 1956—RL.1—Petitioners L-14A Licence holders—Notice issued requiring licence holders to deposit 10% of licence fee u/s 206C(1) of the 1961 Act being buyers of liquor—L14-A licensees sell liquor other than Indian Made Foreign Liquor in retail after purchasing the same from wholesalers—Sale in favour of L-14A licence holders is second sale—Whether petitioners L-14A licence holders fall within definition of ‘buyers’ u/s 206C(1) of the Act—Held, no-Term ‘buyer’ explained—Respondent not entitled to collect 10% of licence fee.*

*Held*, that perusal of the provisions of S.206—C of the Income Tax Act, 1961 makes it clear that every person who sells alcoholic liquor for human consumption other than Indian made foreign liquor is required, at the time of debiting the amount payable by the buyer to his account or at the time of receipt of such amount from the buyer in cash or by cheque or draft or by any other mode, to collect from the buyer a sum equal to 10% of the amount payable by the buyer as income tax at source. The word ‘buyer’ has been defined in the Explanation to mean a person who obtains in any sale by way of auction, tender or any other mode, goods of the nature specified in the Table or the right to receive any such goods but does not include a buyer in the further sale of goods obtained in pursuance of such sale.

Petitioners before us who are L-14A licencees to obtain country liquor by purchase and on the basis of the licences obtained by them they get the right to receive those goods and are, therefore, covered by the first part of the definition of buyer as given in clause (a) of the Explanation. There are then three clauses according to which certain classes of persons are excluded from the concept of buyers as defined in S. 206C with the result that persons who fall in any of these three clauses will not be covered by the definition even if they are covered by the first part. A buyer in the further sale of such goods is one of the classes of persons who stand excluded from the definitions by virtue of sub-clause (ii) of clause (a) of the Explanation being the subsequent buyers. Petitioners before us undoubtedly purchase country liquor from the wholesalers who are L-13 licensees and the latter and purchased the same from the distilleries (manufacturers). The sale in favour of the petitioners is, thus, a second sale covered by the exclusion clause (ii) of clause (a) of the Explanation. In this view of the matter, the petitioners are not buyers within the meaning of S.206C of the Act. Consequently, respondent No. 4 was not required to collect from them the amount payable under clause (1) of Section 206-C of the Act.

(Para 5)

*Further held*, that the Deputy Commissioner of Income tax has held that the Excise and Taxation Commissioner who issued L-14A licenses to the petitioners in an open auction is the seller within the meaning of S. 206-C of the Act and was, therefore, required to collect 10% of the licence fee as income tax at source. We are of the opinion that this view of the Income tax Department is wholly misconceived and not warranted from the provisions of S. 206-C of the Act. A seller is required to collect 10% of the amount as income tax at source only on the sale of goods of the nature specified in column No. 2 of the Table. What the Excise and Taxation Commissioner can be said to have sold to the petitioners are the L-14A licenses on the basis of which they can carry on their business of selling country liquor in retail. He has not sold any goods of the nature specified in column No. 2 of the Table. He has not sold country liquor. The licenses only give a right to the petitioners to receive the goods of the nature specified in column No. 2 of the Table and the requirement of sub section (1) of S. 206-C is that 10% of the amount payable is to be collected by the seller from the buyer of the goods and not from the buyer of the right to receive the goods. Since no goods have been sold by the Excise and Taxation Commissioner, he cannot be described as a 'seller' within the meaning of the Act.

(Para 9)

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Mohan Jain, Advocate with Rakesh Aggarwal, Advocate, *for the petitioners.*

R.P. Sawhney, Sr. Advocate with Rajesh Bindal, Advocate, *for Respondent No. 1 to 3.*

C.L. Sharma, Advocate and Ashok Arora, Advocate, *for Respondent No. 4.*

### JUDGEMENT

*N.K. Sodhi, J.*

(1) The questions that arise for our consideration in this bunch of twenty four writ petitions are whether the holder of L-14A licence issued under the Punjab Liquor Licence Rules, 1956 (for short the Rules) is a 'buyer' within the meaning of Section 206C of the Income Tax Act, 1961 (hereinafter referred to as the Act) and whether the Excise Department while auctioning such a licence is a 'seller' and as such required to collect from such a licensee 10% of the amount of licence fee as income tax ? Facts giving rise to these questions are identical and counsel for the petition No. 15583 of 1999 will govern the other cases as well. For the sake of convenience, the facts are being taken from this case.

(2) Petitioners are holding L-14A licenses issued to them by the Excise Department of the Union Territory, Chandigarh for the year 1999-2000. The mode of grant and the authority to grant the renew such licences is mentioned in Rule 1 of the Rules, according to which, L-14A licence is granted to a retail vend of country spirit for human consumption off the premises by way of auction of negotiations. The petitioners were granted the licences in an open auction held for the purpose in which they were the highest bidders. The State charges on monthly basis a licence fee for the grant of this privilege of selling liquor by the wine contractors like the petitioners. This licence enables the licensee to purchase country liquor from the distilleries (manufacturers) or from the wholesalers who also hold L-13 licence for wholesale vend of country spirit. It is common case of the parties that the petitioners before us had been purchasing country liquor from the wholesalers (L-13 licenses). Before the country liquor can be purchased, a permit is necessary to be obtained from the Excise and Taxation Department for a certain quantity after depositing the excise duty thereon in the Government treasury. Then, on the production of this permit, the wholesalers after charging the price sell and allow the release

of liquor to the L-14A licenses like the petitioners for further sale at the vend. The wholesalers purchase the country liquor from the distilleries and sell the same to the L-14A licences at a price fixed by the State Government under the Punjab Excise Act and the Rules without any bargain or negotiations. L-14A licenses then sell the country liquor in retail at their vends. It is thus clear that the petitioners pay the price of country liquor to the wholesalers which includes the cost of liquor and the container. Since the Excise and Taxation Commissioner, Chandigarh while granting L-14A licences to the petitioners did not regard them as buyers within the meaning of Section 206C of the Act nor did he regard himself as the seller of any goods, he did not collect from the petitioners 10% on the amount of licence fee deposited by them for the period 1st April, 1999 to 30th June, 1999 as income tax at source. The Deputy Commissioner of Income Tax, Circle-I (2) (TDS), Chandigarh was, however, of the view that the petitioners while obtaining their L-14A licences in an auction had obtained the right to receive alcoholic liquor for human consumption other than Indian made foreign liquor and were, therefore, buyers within the meaning of Section 206C of the Act and that the Excise and Taxation Commissioner who granted those licences was the seller. Every seller in terms of Section 206 C of the Act is required to collect 10% of the amount payable at the time of the sale as income tax at source but since the Excise and Taxation Commissioner, Chandigarh had not collected the said amount, the Deputy Commissioner of Income Tax issued notice to him and by a detailed order dated 15th October, 1999 held him liable to pay income tax to the tune of Rs. 97,09,050 to the credit of the Central Government as provided in clause (6) of Section 206C of the Act. The Deputy Commissioner of Income Tax held that L-14A licencees like the petitioners who obtain the right to receive the specified goods mentioned in the table in sub section (1) of Section 206C of the Act fall within the purview of the definition of buyer and were liable to pay 10% as income tax on the amount of licence fee deposited by them every month. It was further, held that the Excise and Taxation Commissioner was the seller. On receipt of the order from the Income Tax Department, the Deputy Excise and Taxation Commissioner, Chandigarh issued notices to the petitioners dated 27th October, 1999 requiring them to deposit 10% of the amount of licence fee deposited by them as income tax in respect of their country liquor vends for the period 1st April, 1999 to 30th June, 1999. They were further directed to deposit 10% income tax at source under Section 206C of the Act alongwith the monthly licence fee payable in future. It is against these notices that the present petition has been filed under Article 226 of the Constitution.

(3) The relevant part of Section 206C of the Act with which we are concerned in these cases is reproduced hereunder for facility of reference:

“206C(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 at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft 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 that said Table of such amount as income-tax;

**TABLE**

Sr. No.	Nature of Goods	Percentage
(1)	(2)	(3)
(i)	Alcoholic liquor for human consumption (other than Indian-made foreign liquor) and tendu leaves	Ten per cent
(ii)	Timber obtained under a forest lease	Fifteen per cent
(iii)	Timber obtained by any mode other than under a forest lease	Five per cent
(iv)	Any other forest produce not being timber or tendu leaves	Fifteen per cent

Provided that .....

(2) The power to recover tax by collection under sub section (1) shall be without prejudice to any other mode of recovery.

(3) Any person collecting any amount under sub-section (1) shall pay within seven days the amount so collected to the credit of the Central Government or as the Board directs.

(4) xx xx xx xx

(5) xx xx xx xx

(5A) xx xx xx xx

(5B) xx xx xx xx

(5C) xx xx xx xx

(6) Any person responsible for collecting the tax who fails to collect the tax in accordance with the provisions of this section, shall, notwithstanding such failure, be liable to pay the tax to the credit of the Central Government in accordance with the provisions of sub-section (3).

(7) Without prejudice to the provisions of sub section (6) if the seller does not collect the tax or after collecting the tax fails to pay it as required under this section, he shall be liable to pay simple interest at the rate of two percent per month or part thereof on the amount of such tax from the date on which such tax was collectible to the date on which the tax was actually paid.

(8) to (11) xx xx xx xx

*Explanation* :—For the purpose of this section :

(a) “buyer” 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—

(i) a public sector company.

(ii) a buyer in the further sale of such goods obtained in pursuance of such sale, or

(iii) a buyer where the goods are not obtained by him by way of—auction and where the sale price of such goods to be sold by the buyer is fixed by or under any State Act;

(b) “seller” means the Central Government, a State Government or any local authority or corporation or authority established by or under a Central, State or Provincial Act, or any company, or firm or cooperative society.”

(4) Alcoholic liquor for human consumption other than Indian made foreign liquor is one of the goods specified in the Table referred to in Section 206C of the Act and, therefore, this provision would apply to such goods.

(5) A perusal of the aforesaid provisions makes it clear that every person who sells alcoholic liquor for human consumption other than

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Indian made foreign liquor is required, at the time of debiting the amount payable by the buyer to his account or at the time of receipt of such amount from the buyer in cash or by cheque or draft or by any other mode, to collect from the buyer a sum equal to 10% of the amount payable by the buyer as income tax at source. The word 'buyer' has been defined in the Explanation to mean a person who obtains in any sale by way of auction, tender or any other mode, goods of the nature specified in the Table or the right to receive any such goods but does not include a buyer in the further sale of goods obtained in pursuance of such sale. Petitioners before us who are L-14A licensees to obtain country liquor by purchase and on the basis of the licences obtained by them they get the right to receive those goods and are, therefore, covered by the first part of the definition of buyer as given in clause (a) of the Explanation. There are then three clauses according to which certain classes of persons are excluded from the concept of buyers as defined in S. 206C with the result that persons who fall in any of these three clauses will not be covered by the definition even if they are covered by the first part. A buyer in the further sale of such goods is one of the classes of persons who stand excluded from the definition by virtue of sub-clause (ii) of clause (a) of the Explanation being the subsequent buyers. Petitioners before us undoubtedly purchase country liquor from the wholesalers who are L-13 licensees and the latter and purchased the same from the distilleries (manufacturers). The sale in favour of the petitioners is, thus, a second sale covered by the exclusion clause (ii) of clause (a) of the Explanation. In this view of the matter, the petitioners are not buyers within the meaning of S. 206C of the Act. Consequently, respondent No. 4 was not required to collect from them the amount payable under clause (1) of Section 206-C of the Act.

(6) It was strenuously contended by Shri Sawhney on behalf of the Department that the Explanation talks of two types of buyers (i) those who purchase goods and deal with them (ii) those who acquire the right to receive the goods and according to the learned counsel exclusion referred to in clause (a) of the Explanation refers only to (i) i.e. only those buyers who purchase goods and deal with them and, therefore, petitioners who have acquired the right to receive the goods on the basis of the licences issued to them by the Excise Department are buyers within the meaning of clause (a) of the Explanation and are not excluded. The learned counsel has placed reliance on a judgment of the Patna High Court in *State of Bihar and another v. Commissioner of Income Tax and others* (1). We are unable to accept this contention of the learned counsel for the Department. The language of clause (a) in the Explanation is clear and unambiguous and the exclusions referred

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(1) (1993) 202 I.T.R. 535

to therein do exclude from the main provision the subsequent purchasers of country liquor. It is not disputed by the Department that the petitioners on the basis of their L-14A licences purchased the country liquor from wholesalers who are L-13 licensees.

(7) Now coming to the judgement of Patna High Court in *state of Bihar's case (supra)*. It is true that the State of Bihar was held to be a seller of alcoholic liquor for human consumption within the meaning of Sections 44AC and 206C of the Act as they then stood but, in our opinion, this judgement is of no help to the Department. The provisions of Sections 44 AC and 206C of the Act as they then stood were under consideration of the learned Judges which provisions are materially different from Section 206C of the Act which is under our consideration. Another Bench of the same High Court in *Ramjee Prasad Sahu and others vs. Union of India and others (2)* the provisions of Section 206C of the Act as were introduced by the Finance Act, 1992 with effect from 1st April, 1992 and held that 15% of the excise duty payable by the petitioners, therein on account of purchase of country liquor could not be collected as income tax under the provisions of Section 206C of the Act. They referred to their earlier judgement in *State of Bihar's case (supra)* and observed that the judgement was interpreting the provisions of Sections 44AC and 206C of the Act as they then stood which were materially different. We are in agreement with the view expressed in *Ramjee Prasad Sahu's case (supra)*.

(8) Before concluding on this aspect, we may also refer to Circular No. 660 dated 15th September, 1993 issued by the Central Board of Direct Taxes wherein it has been made clear that the provisions of sub-section (1) of Section 206C of the Act in relation to a buyer will not apply to a public sector company and to pay any other buyer who obtains the said goods at a second or subsequent sale of such goods. The Board has clarified that the provisions would apply only at the point of the first sale of such goods. Petitioners who buy country liquor at a second or subsequent sale thus stand excluded. It must, therefore, be held that they are buyer in further sale of those goods and are excluded by clause (ii) of clause (a) of the Explanation, the first sale-being the sale made by the distilleries (manufacturers) to the wholesalers.

(9) There is yet another aspect of the matter. The Deputy Commissioner of Income tax has held that the Excise and Taxation Commissioner who issued L-14A licences to the petitioners in an open auction is the seller within the meaning of Section 206-C of the Act and was, therefore, required to collect 10% of the licence fee as income

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tax at source. We are of the opinion that this view of the Income tax Department is wholly misconceived and not warranted from the provisions of Section 206-C of the Act. A seller is required to collect 10% of the amount as income tax at source only on the sale of goods of the nature specified in column No. 2 of the Table. What the Excise and Taxation Commissioner can be said to have sold to the petitioners are the L-14A licenses on the basis of which they can carry on their business of selling country liquor in retail. He has not sold any goods of the nature specified in column No. 2 of the Table. He has not sold country liquor. The licences only give a right to the petitioners to receive the goods of the nature specified in column No. 2 of the Table and the requirement of Sub Section (1) of Section 206-C is that 10% of the amount payable is to be collected by the seller from the buyer of the goods and not from the buyer of the right to receive the goods. Since no goods have been sold by the Excise and Taxation Commissioner, he cannot be described as a 'seller' within the meaning of the Act.

(10) We may now examine the matter from another angle as well. Sub-section (1) of Section 206C of the Act requires that every seller of alcoholic liquor for human consumption other than Indian made foreign liquor shall collect from the buyer 10% of the amount payable at the time of debiting the amount to the account of the buyer or at the time of receipt of any such amount in cash or by cheque or draft or by any other mode. It is thus clear that what is collectable is 10% of the 'amount payable'. The amount payable is that amount which is payable at the time of debiting the amount to the account of the buyer or at the time of receiving money from him in cash or by cheque or by draft or by any other mode for the goods sold to him. That amount, in our opinion, is the purchase price which the buyer pays to the seller for the goods sold and in the cases before us the amount which the petitioners pay to the wholesalers after they have obtained a permit from the Excise Department by depositing the excise duty. The amount payable would only be the price which the buyer will pay to the seller. It cannot be any stretch of reasoning include licence fee which the buyer has to pay for the licence that he has obtained. The payment of this fee is wholly unrelated to the amount to be paid at the time of purchasing country liquor from the wholesalers. Even if L-14A licensee does not purchase any country liquor, the licence fee has nevertheless to be paid by him to the Department and it will be preposterous to suggest that income tax should still be recovered. Licence fee is, therefore, not a part of the 'amount payable' at the time of the sale of country liquor. In this view of the matter, we have no hesitation in holding that the 'amount payable' in Section 206C of the Act does not include the licence fee which has to be paid by a licensee to the State Government. The Deputy

Commissioner of Income Tax was in error in including the licence fee in the amount payable under Section 206C of the Act and the Excise and Taxation Commissioner was not required to deduct 10% of the licence fee from the L-14A licencees like the petitioners and it follows that the petitioners were not liable to deposit that amount.

(11) In the result, the writ petitions are allowed and the impugned notices issued to the petitioners requiring them to deposit 10% of the licence fee as income tax quashed. There is no order as to costs.

**J.S.T.**

*Before V.M. Jain, J.*

STATE BANK OF INDIA,—*Petitioner*

*versus*

BISHNA AND ANOTHER,—*Respondents*

C.R. No. 5266 of 1999

29th February, 2000

*Court Fees Act, 1870—Schedule I, Article I—Trial Court decreed the suit of the Bank with costs and future interest @ 6% P.A.—In appeal, Bank claiming future interest @ 15% P.A.—Whether the appellate Court justified in directing the Bank to pay ad valorem court fee on the excess amount claimed—Held, yes.*

*Held*, that the learned Additional District Judge was perfectly justified in directing the plaintiff-appellant—Bank to pay *ad valorem* court fee in the appeal on the difference of the amount claimed in appeal towards interest i.e. on the difference between the amount claimed and the amount awarded by way of interest. Accordingly, the present revision petition fails and is dismissed in limine. It is made clear that the plaintiff—Bank would be required to pay the *ad valorem* court fee on the amount claimed by the bank by way of future/further interest which had been disallowed by the trial court, to be calculated up to the date of filing of the appeal.

(Paras 19 and 20)

IPS Doabia, Advocate, *for the petitioner.*

### JUDGMENT

*V.M. Jain, J.*

(1) This is a revision petition against the order dated 29th January, 1999 passed by the Additional District Judge, Karnal directing the