

Demand to be set-aside if nil TCS certificate submitted first-time before appellate authorities: HC

Summary – The High Court of Gujarat in a recent case of Chhaganbhai K Sanghani., (the Assessee) held that where in case of assessee, a dealer in scrap, AO levied interest and tax in terms of section 206C(7) on account of non-collection of tax at source, in view of fact that assessee had submitted certificates provided by buyers under sub-section (1A) of section 206C before appellate authorities, impugned order passed by AO was to be set aside

Facts

- The assessee was dealer in scrap. During the relevant assessment year, he had sold scrap on which he was required to collect tax at source in terms of section 206C(1) unless the buyers had provided him necessary certificates referred to in sub-section (1A) thereof. Before the Assessing Officer, the assessee produced no such certificates.
- The Assessing Officer therefore, in terms of sub-section (7) of section 206C, levied tax and interest. In appeal before the Commissioner (Appeals) the assessee produced necessary certificates issued by the buyers. The Commissioner (Appeals), however, ignored such certificates and confirmed the order of Assessing Officer.
- The Tribunal, allowed the assessee's appeal holding that the revenue had no dispute with respect to genuineness or co-relation between the sale and purchases covered under such certificates.
- On revenue's appeal:

Held

- In terms of sub-section (1) of section 206C, every seller would have to collect tax at source at the time of sale of goods at the prescribed percentage and deposit the same with the Government revenue unless in terms of sub-section (1A) thereof, the buyer has furnished to such seller, declaration in writing in a prescribed form and fulfilled in prescribed manner that the goods are to be utilized for the purpose of manufacturing, processing or producing articles or things, or for the purpose of generation of power and not for trading purpose.
- Sub-section (1) of section 206C is thus a substantive requirement of collection of tax at source and depositing of the same with the Revenue. Sub-section [1A] refers to a situation under which collection under sub-section [1] would not have to be made. These are substantive provisions. Requirements of sub-section (1A) are that the buyers should provide to the seller, a declaration in prescribed form, verified in the prescribed manner. Such prescriptions are to be found in Rule 37C of the Income-tax Rules, 1962. Sub-section (1) thereof provides that declaration under sub-section 206C shall be in form 27C and shall be verified in the manner indicated therein.
- Sub-rule (2) of Rule 37C requires that the declaration referred to in sub-section (1) shall be furnished in duplicate to the person responsible for collecting tax. Under sub-rule (3), such person would

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deliver to the Chief Commissioner or the Commissioner, one copy of such declaration on or before the seventh day of the month, next following the month in each declaration is issued.

- Thus, rule 37C in addition to prescribing the form for grant of declaration and the manner the same should be verified, impose two additional requirements *viz.*, [i] that such declaration shall be furnished in duplicate to the person responsible for collecting the tax and that such person would deliver a copy thereof to the Commissioner within the time prescribed. Sub-section (1) of section 206C does not refer to any such time limit. Clearly therefore, the legislative intent was not to make this time limit mandatory or a precondition for availing the benefit of not deducting tax at the time of sale of goods aimed for specified purpose.
- In the instant case, Tribunal has come to the factual finding that there was no doubt about genuineness of declaration and co-relation between the goods sold. There was no mismatch between the goods sold and those covered under such declarations the revenue, however, submitted that in the case of inordinate time taken by the assessee in producing such declarations, it would be very difficult for the revenue to make inquiries; if found necessary. In a given situation, this may give rise to a further probe or even total denial of the relief from the operation of sub-section (7) of section 206C of the Act; if necessary facts are not on record. However, in the present case, no such element is brought on the record by the revenue.
- Tax Appeal is dismissed.