

आयकर अपीलिय अधीकरण, खंडपीठ गुवाहाटी ,
*IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH, GUWAHATI*

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.08-13/Gau/2017
Assessment Years :2008-09 to 2013-14

M/s Union Bonded Ware House, Meherpur, Silchar, Dist. Cachar-788015 [PAN No.AABFU 4225 A]	V/s.	Income Tax Officer, TDS, Silchar, Aayakar Bhawan, PWD R Doad, Silchar-788001
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

आवेदक की ओर से/By Assessee	Shri D.K. Biswas, Advocate & Shri Kishor Kr. Jain, FCA
राजस्व की ओर से/By Revenue	Shri D.Loyi, Addl. JCIT-DR
सुनवाई की तारीख/Date of Hearing	01-07-2019
घोषणा की तारीख/Date of Pronouncement	03-07-2019

आदेश /ORDER

PER BENCH:-

The assessee has filed the instant six appeal(s) for assessment year(s) 2008-09 to 2013-14 against the Commissioner of Income Tax (Appeals)-Shillong's separate orders all dated 17.11.2016 in case No.s SIL-147-152/2015-16; respectively affirming Assessing Officer's action raising demands thereby treating it as an assessee in default for collection of TCS in proceedings u/s 201(1), r.w.s. 201(1A) r.w.s. 206(C) of the Income Tax Act, 1961; in short 'the Act'.

2. We have heard both the parties. Case file(s) perused. It transpires during the course of hearing that both the lower authorities' have held

assessee to be the assessee in default for the reason that it failed to collect of TDS including excise duty / VAT from its payees. We are informed that this assessee is engaged in sale-purchase Indian made foreign liquor "IMFL" and other allied distilled goods from manufacturer/distributors. Mr. Biswas states at the bar that although the assessee has in fact not collected the excise duty/VAT component in issue from its purchasing party, he has got evidence to prove that the said parties have already credited / paid the same to the government's account. He therefore raises this new plea during the course of hearing before us.

3. Faced with this situation, Mr. Loyi submits that the assessee has raised the instant new plea which requires factual verification from the Assessing Officer's end. We take into account all these intervening developments to affirm both the lower authorities' action in principle and restore the instant issue back to the Assessing Officer for necessary factual verification as prescribed u/s 206(6A) proviso of the Act. We make it clear that hon'ble apex court's landmark decision in the case of *Hindustan Coco Cola Beverages Pvt Ltd.* (2007) 293 ITR 226 (SC) has settled the law that the impugned liability is vicarious in nature wherein the deductor / collector assessee had to perform his duty provided in the law on behalf of other assessee in other words. Their lordship concluded that in case the other party has already paid or credited the tax sum in issue, the deductor / collector assessee cannot be held to be the assessee in default. We adopt the very analogy herein as well to accept assessee's sole substantive grievance canvassed in the instant six appeals for statistical purposes. We leave it open for the Assessing Officer to conduct the foregoing factual verification exercise. The assessee is directed to place on record all necessary evidence envisaged u/s 206(C) (6A) proviso of the Act before the Assessing Officer within three effective opportunities failing which our instant remand directions shall stand vacated.

4. The assessee's instant six appeals are allowed for statistical purposes in above terms.

Order pronounced in the open court 03/07/2019

Sd/-

(लेखा सदस्य)

(A.L.Saini)

(Accountant Member)

Guwahati,

*Dkp

दिनांक:- 03/07/2019 गूवाहाठी ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक/Assessee-M/s Union Bonded Ware House, Meherpur, Silchar, Dist. Cachar-
2. राजस्व/ Revenue-ITO TDS, Aayakar Bhawana, PWD Road, Silschar-788001
3. संबंधित आयकर आयुक्त गूवाहाठी / Concerned CIT Guwahati
4. आयकर आयुक्त- अपील / CIT (A) Guwahati
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, गूवाहाठी खंडपीठ / DR, ITAT, Guwahati
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary (on tour)

आयकर अपीलीय अधिकरण,

गूवाहाठी ।