

OD – 5

ORDER SHEET
WPO/441/2021
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

MJUNCTION SERVICES LTD. AND ANR.
VS
UNION OF INDIA AND ORS.

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date : 25TH AUGUST, 2021.

Appearance:
Mr. J. P. Khaitan, Sr, Adv.
Mr. P. Jhunjhunwala, Adv.
Mr. J. Ghorai, Adv.
Mr. S. Chatterjee, Adv.
Mr. S. banerjee, Adv.
Mr. D. Ghorai, Adv.
...For the Petitioner

Mr. P. K. Bhowmick, Adv.
Mr. Asok Bhowmick, Adv.
...For the Respondent

The Court : Let affidavit-of-service filed in Court today be kept with the record.

This writ petition has been filed by the writ petitioner who is an e-commerce operator on being aggrieved by newly inserted provision of Section 194-O of the Income Tax Act, 1961 with effect from 1st October, 2020 which cast an obligation on the part of the petitioner to deduct and deposit TDS on account sale consideration received from e-commerce participant /customers/buyers and sought the relief of declaration that under the said provision petitioner is not required to deduct tax and deposit under the provisions of Section 194-O of the Income Tax Act in cases where sale of goods or provision of services does not take place and/or through the petitioner company platform

and/or purchaser of the goods or recipients of the services does not make payment to the petitioner company or the sale of goods or provision of services and in case of reverse action and when the petitioner's client uses the software sold/licenses by it to them or procuring their requirement of goods and services and alternatively to declare the aforesaid provision as ultra vires and unconstitutional.

Petitioner is also aggrieved by inaction on the part of the respondent No.8/CBDT and sitting over and not disposing the representations of the petitioner for redressal of its grievances in this regard, made under Section 194-O(4) of the Act. It appears from record that twice representations were made by the petitioners, first on 22nd December, 2020 being Annexure P-10 to the writ petition and another such representation was made on 8th June, 2021 as annexure P-15 to the writ petition.

I find from some paragraphs the aforesaid representations dated 22nd December, 2020 particularly paragraphs 3.1, 3.2, 3.3 of the said representation highlighting several difficulties petitioner is facing in complying with the aforesaid provision of Section 194-O of the act which are relevant and quoted hereunder :-

“3.1 MSL humbly submits that due to the above practical challenges it is impossible for the Applicant to deduct tax at source under Section 194-O of the Act on behalf of the buyers and deposit it with the Government of India.

3.2 Sales consideration is not routed through MSL : The sales consideration for purchase and sale of goods takes place

directly between buyer and sellers, i.e., outside MSL's portal. Since, sale consideration is not received by MSL, it is not possible for MSL to deduct tax at source on the gross amount received by the sellers.

3.3 No mechanism to deduct TDS on behalf of buyers : MSL's clients are usually the sellers of the goods or services. MSL does not have any business relationship with the buyers who are participating in the auction of goods or services. Hence, MSL is unable to enforce obligation on the buyers to route the consideration through MSL so that MSL makes payment to the sellers after deducting TDS under Section 194-O of the Act."

Mr. Bhowmick, learned Advocate appearing for the respondents could not justify the inaction on the part of the respondent No.8/CBDT and the act of sitting over the aforesaid representations of the petitioner and not disposing of the same which is causing great difficulties to the petitioner in carrying on its business.

Considering the submission of the parties, the respondent No.8 /CBDT is directed to consider and dispose of the aforesaid representations of the petitioners being Annexure P-10 and P-15 of the writ petition within a period of six weeks from the date of communication of this order by passing a reasoned and speaking order after dealing with the contentions raised by the petitioners in its aforesaid representations and after giving effective opportunity of

hearing to the petitioner or its authorized representative and to communicate its decision to the petitioner within one week thereafter.

In the meantime, the petitioner shall go on depositing the TDS which it will receive from the e-commerce participants/customers/buyers and the respondent concerned shall not treat the petitioner in default till the disposal of the aforesaid representations by the respondent No.8.

Liberty is granted to the petitioner to seek appropriate relief in case it is further aggrieved by the order of the respondent No.8 passed on its representations.

Respondents are directed to file affidavit-in-opposition by 7th October, 2021. Petitioner to file reply thereto, if any, by 8th November, 2021.

List this matter on 26th November, 2021 for final hearing.

At the time of hearing, both the parties should be ready with a short written notes of argument.

(MD. NIZAMUDDIN, J.)