

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO. 2763 OF 2002**

Capt. Kersy Rathonsha Driver

....Petitioner.

Vs.

The Collector of Chennai & Ors.

....Respondents.

Mr. S.C. Naidu a/w Mr. T.R. Yadav i/by C.R. Naidu & Co. for the  
Petitioner.

Mr. Asif I.I. Patel, Addl. G.P. for Respondent Nos. 1 and 2.

Mr. Surel Shah a/w Ms. Khooshnum R. Daviervalva i/by Mulla & Mulla  
& Craigie Blunt & Caroe for Respondent Nos. 5 and 6.

**CORAM : ANOOP V. MOHTA AND  
G.S. KULKARNI, JJ.**

**DATE : 1 SEPTEMBER 2016.**

**ORDER:-**

The Petitioner is benefited by the Judgment and award dated 13 May 1999 passed by the Central Government Industrial Tribunal (for short, "*the CGIT*"). The operative part of the award reads thus:-

*"The applicant to get Rs.13,13,748/- (Rupees Thirteen Lakhs Thirteen Thousand Seven Hundred Forty Eight only) from the Opponents."*

2 In pursuance of the award of the CGIT, a recovery certificate dated 13 September 2002, (Exhibit B) was issued for an amount of Rs.13,13,748/- (Rupees Thirteen Lakhs Thirteen Thousand

Seven Hundred Forty Eight Only). As the amount was not paid to the Petitioner by Respondent Nos. 5 and 6, the Petitioner approached this Court in the present Petition praying for the following reliefs:-

- a) *For a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, direction or Order under Article 226 of the Constitution of India directing the Respondent Nos. 1 & 2 to recover an amount of Rs.13,13,748/- (Rupees Thirteen Lakhs Thirteen Thousand Seven Hundred Forty Eight Only) from the Respondent Nos. 3, 4, 5 and 6 as arrears of land revenue in terms of the Recovery Certificate bearing No. B-16(7)/2001-CON dated 13<sup>th</sup> September, 2002 and at Exhibit B hereto together with interest @ 18% p.a. from the date on which salary fell due or the date of the order of the CGIT i.e. 13<sup>th</sup> September, 1999 till payment thereof;*
- b) *For a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, direction or Order under Article 226 of the Constitution of India directing the Respondent Nos. 3, 4, 5 and 6 to perform the duties imposed upon it under Section 203 read with Section 192 of the Income Tax Act, 1961 and Rule 31 of the Income Tax Rules framed in exercise of powers conferred under Section 295 of the Income Tax Act, 1961 to deposit amount of Rs.5,59,749/- (Rupees Five Lakhs Fifty Nine Thousand Seven Hundred Forty Nine only) towards tax and issue a certificate in form 16 to the Petitioner in order to enable the Petitioner to comply with the statutory provisions of the Income Tax Act which is imposed upon him by the said law.*
- c) *Pending the hearing and final disposal of this Petition the Respondent Nos. 3, 4, 5 and 6 be directed to deposit the sum of Rs.13,13,748/- (Rupees Thirteen Lakhs thirteen Thousand Seven Hundred Forty Eight*

*Only) with this Hon'ble High Court in accordance with the order dated 13<sup>th</sup> May, 1999 at Exhibit-A hereto”*

3 There are various interim orders passed in this Petition, in pursuance of these orders, an amount of Rs.20,13,748/- (Rupees Twenty Lacs Thirteen Thousand Seven Hundred Forty Eight only) came to be deposited in this Court by Respondent Nos. 5 and 6. The learned counsel appearing for the Petitioner makes a statement that the amount of the recovery certificate of Rs.13,13,748/- has already been received by the Petitioner. The submission is that the interest component is not received. However, the learned counsel appearing for the parties state that after withdrawal of the principal amount of Rs.13,13,748/-, from the total amount of Rs.20,13,748/-, the balance amount is still lies deposited in this Court and is accruing interest.

4 Considering the principal prayer (a), and in the facts and circumstances of the case, it would be appropriate and in the interest of justice that the Petitioner is permitted to withdraw the said balance amount along with the accrued interest. The learned counsel appearing for the Respondents, on instructions, has no objection for withdrawal of the same. In view of this position, the issue as regards the amount to be recovered by the Petitioner under the recovery

certificate, in our opinion, requires no further adjudication.

5           As regards prayer clause (b), the contention of the  
Petitioner is that the Respondents were liable to deduct Tax Deducted  
at Source (*TDS*), from the salary and therefore, appropriate directions  
be issued as prayed for in prayer clause (b).

6           In this regard, having considered the facts of the case in  
totality and the operative directions in the recovery certificate and  
more particularly, the principal prayer as made in prayer clause (a),  
having being completely satisfied, we do not feel it appropriate, to  
accede the Petitioner's request for a final relief to be granted in terms  
of prayer clause (b), though at the ad-interim stage, an order dated  
17 December 2000, came to be passed in terms of prayer clause (b),  
and more so considering the nature of this prayer as noted by us  
above. The Respondents, in the capacity of an employer if were under  
an obligation to deduct the TDS under the Income Tax Act, 1961 ("*IT  
Act*"), and that if any such statutory duty is cast upon the Respondents  
as employers, the same would be required to be performed. If there is  
any breach of a statutory obligation in view of the provisions of the IT

Act, then there are provisions under the IT Act, which can be invoked by either of the parties, in respect of any reliefs the parties may seek under the provisions of IT Act. In fact, these would be issues under the respective assessments for the concerned financial year within the jurisdiction of the Assessing Officer and it would be open to the parties to raise their respective case if any such issue is to arise. We, thus, keep all points open in this regard, to be raised by the parties before the appropriate forum as and when necessary.

7 In the circumstances, the Writ Petition does not require any further adjudication, it is accordingly disposed of in the above terms. No Costs.

8 The office to act on an authenticated copy of this order, in considering the application on behalf of the Petitioner for withdrawal of the amount, as deposited in this Court, with accrued interest, if any.

**(G.S. KULKARNI, J.)**

**(ANOOP V. MOHTA, J.)**