Mere delay in filing a declaration in the prescribed format is a procedural lapse and it would not obligate the seller to collect tax at source

Background
Recently, the Gujarat High Court in the case of Siyaram Metal Udyog (P) Ltd.1 (the taxpayer or the seller) while upholding the order of the Income-tax Appellate Tribunal (the Tribunal) held that a minor delay in filing a declaration in the prescribed format is a mere procedural lapse and it was in compliance with provisions of filing the declaration. Therefore, the seller was under no obligation to collect tax at source.

Facts of the case
• The Assessing Officer (AO) had made additions on the ground that the seller had breached Section 206C2 of the Income-tax Act, 1961 (the Act) in case of sale of scrap, on the ground that the seller had not submitted form 27C comprising of the buyer’s declaration to the Commissioner of Income-tax (CIT) in time.

• The Tribunal while relying on the decision in the case of Bharti Metals3 observed that that such a belated submission of relevant form is a procedural lapse only and deleted the addition of interest under Section 206C(7) of the Act on account of non-collection of Tax Collected as Source (TCS) on sale of scrap.

High Court’s ruling
• The High Court observed that the Tribunal relying on an earlier decision in the case of Bharti Metals held that though the items in question were scrap, in view of the fact that the seller had admittedly filed a declaration in form 27C collected from the buyers, held in favour of the seller. The Tribunal observed that there is no dispute about the fact that the seller has belatedly submitted relevant Form No. 27C collected from its buyers. The same were placed on record before the AO itself who declined to accept the same in view of delay in submission thereof. There is no issue qua genuineness of these Forms. It was also observed that the co-ordinate Bench decision of Tribunal in the case of Bharti Metals already held that such a belated submission of relevant Form is a procedural lapse only. The tax department was unable to point any distinction on facts or law therein. The Tribunal thus held that there was no reason to interfere with lower appellate findings remitting the issue back to the AO for adjudication afresh as per law. The Tribunal, with regard to the restoring the interest component of the above impugned demand, observed that the issue was a consequential one.

• In terms of the Explanation (aa) of Section 206(C) of the Act, it provides that any person who purchases the goods in retail sale for personal consumption would not be included within the definition of the term ‘buyer’. Calculation of tax would not be made under Section 206C(1) of the Act if such buyer

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1 CIT v. Siyaram Metal Udyog (P) Ltd. (ITA No.519 & 526 of 2016) - Taxsutra.com
2 Every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode whichever is earlier, collect from the buyer of any goods of the nature specified, a sum equal to the percentage specified such amount of income-tax
3 Bharti Auto Products v. CIT [2013] 37 taxmann.com 37 (Raj)
furnishes to the person responsible for the tax a declaration [under Section 206C(1A) of the Act] in writing in prescribed form declaring that the goods in question are to be utilised for the purposes of manufacturing process or producing articles or things or for the purpose of generation of power and not for trading purposes.

- The declaration to be made in Section 206C(1A) of the Act thus, would enable the tax department to, as and when the need so arises make proper verifications. This sub-section itself does not provide for any time limit within which, such declaration is to be made. The time limit is given in Rule 37C of Income Tax Rules, 1962 (the Rules).

- When there was no dispute about such a declaration being filed in a prescribed format and there was no dispute about the genuineness of such declaration, mere minor delay in filing the said declaration would not defeat the very claim. The High Court observed that the Tribunal had viewed such delay liberally and there was substantial compliance with the requirement of filing the declaration.

Our comments

The provisions of Section 206C of the Act casts an obligation upon the seller of specified goods to collect TCS at the specified rates from the buyer of the goods.

The instant decision deals with a case where there was a delay in filing the declaration for non-applicability of TCS provisions. The High Court observed that where there was no dispute about the declaration being filed in the prescribed format, and there was no dispute about the genuineness of the declaration, a mere minor delay would in no way defeat the claim of the taxpayer.

Though Rule 37C(3), prescribes a time limit till the seventh day of the next month following the month in which declaration is furnished to the seller, the High Court while upholding the decision of the Tribunal held that a minor delay in filing a declaration in the prescribed format is a mere procedural lapse and it was in compliance with provisions of filing the declaration. Though High Court did not give any observations with respect to deletion of interest under Section 206C(7) of the Act, the Tribunal had already deleted the same.

The Madras High Court in the case of Adisankara Spinning Mills (P.) Ltd. observed that where the form 27C has been obtained from the buyer and has been filed before the assessing authority in the course of appellate proceedings, the technical breach was liable to be condoned.

Under the Act, there are various provisions which require the taxpayer to file the prescribed forms, reports, etc. within defined time limits. It has been observed that in the instances where such requirements have not been fulfilled within the time limits, the taxpayer’s claim has been rejected. This decision may help in such cases where there is a mere procedural delay on the part of taxpayer to comply with the prescribed requirements.

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