

## Tax to be deducted under sec. 194C if cargo handling service was labour oriented with assistance of machines

**Summary – The High Court of Gujarat in a recent case of Aditya Marine Ltd., (the Assessee) held that where assessee was engaged in business of clearing and forwarding of cargo, etc. and it made payments towards cargo handling charges to two parties and work involved was mainly labour oriented work with help of various machineries and equipments, TDS provisions of section 194C would be applicable with respect to said payments**

### Facts

- The assessee-company was engaged in the business of clearing and forwarding of cargo, shipping agency and other ancillary trading activities. During the year, it made payments towards cargo handling charges to two parties by name 'B' and 'L' and deducted the tax at source under the provisions of section 194C.
- The Assessing Officer held that the assessee was liable to deduct tax at source under the provisions of section 194-I. He accordingly passed an order under section 201(1)/201(1A) read with section 194-I and raised tax demand upon the assessee.
- On appeal, the Commissioner (Appeals) set aside the order passed by the Assessing Officer and upheld the claim of the assessee. He held that from the terms and conditions of contracts executed by the assessee with 'B' and 'L', it was evident that the work involved was mainly labour oriented work with the help of various machineries and equipments. This work involved providing of man power for loading and unloading, shifting and transportation of the cargo to the destination as well. It was also evident from these terms and conditions that the possession and control over equipments and man power did not vest with the assessee which was a determinant factor so as to decide the applicability of the provisions of section 194-I. The rates for each kind of cargo had also been specified on the basis of the volume of the cargo being handled and not on the basis of time period involved in the execution of the said contract. Therefore, the action of the Assessing Officer was unjustified.
- On second appeal, the Tribunal considering the nature of work /contract and considering the decision of the Gujarat High Court rendered in case of *CIT v. Swayam Shipping Services (P.) Ltd.* [\[2011\] 199 Taxman 249 \(Mag.\)/11 taxmann.com 137](#) dismissed the appeal preferred by the revenue.
- On appeal to High Court:

### Held

- Identical question came to be considered by the Gujarat High Court in the case of *CIT v. Swayam Shipping Services Private Limited (supra)*, wherein it is held that the provision under section 194C would be applicable with respect to similar work contracts. The Commissioner (Appeals) as well as the Tribunal have heavily relied upon the said decision of this Court.

- In view of the above, there is no reason to interfere with the order of the Tribunal. Under the circumstances, no substantial question of law arose in the instant tax appeal.