

## HC dismissed 'Vodafone' petition as hearing opportunity was provided during cancellation of lower TDS certificate

**Summary – The High Court of Bombay in a recent case of Vodafone India Ltd., (the Assessee) held that where relevant order sheet in respect of cancellation of certificate under section 197 for deduction of tax at lower rate was signed by representative of assessee evidencing that assessee attended hearing, writ petition filed by assessee alleging lack of opportunity to hearing was to be rejected**

### Facts

- The assessee's certificate issued for lower deduction of tax at 0.39 per cent under section 197 was cancelled by the department. The assessee's contention was that no opportunity of hearing was granted to the assessee in advance in respect of cancellation of the certificate.
- The revenue stated that the above averment was false and misleading. The revenue in support furnished affidavit of the Deputy Commissioner. Along with same, the relevant order sheet which was signed by the representatives of the assessee was also submitted as evidence of having attended the hearing.
- In reply, the assessee submitted that it was a case of more inarticulate/inappropriate drafting and there was never any intent on the part of the assessee to secure any undue advantage. It was only a drafting error done by the Advocate for which the assessee should not be held liable.

### Held

- It is a settled position in law that any party who approaches this Court seeking a prerogative writ in extraordinary writ jurisdiction, must come with clean hands. The least that is expected of a petitioner is that he would not misstate and/or misrepresent and/or suppress material facts and/or indulge in *suppressio veri*. The petition should reveal utmost good faith. The petitioner must ensure that every statement made in petition, which is a sworn statement, is correct and honest. In case, a party breaches the above primary/basic obligation, the writ Court is duty bound to dismiss the petition. This rule is developed to ensure that the process of Court is not abused by dishonest litigants. The examination in this case, would therefore, be whether the *ex facie* misstatement and suppression of the hearing having been granted by stating in the petitioner 'no personal hearing whatsoever was granted' was a material suppression, *i.e.*, by making such a statement was the petitioner likely to gain therefrom and whether it was a *bona fide* mistake/inappropriate drafting.
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- Except stating that no hearing was given there was no mention of meeting the respondent No. 1-Deputy Commissioner with regard to these proceedings was even mentioned. The submission of the petitioner that even the impugned order does not mention grant of any personal hearing to the petitioner, was not impressive. The submission of the assessee does not absolve the petitioner from stating all facts fully and truly which would include the fact that a hearing (howsoever inadequate) was given to the petitioner. This fact of hearing being granted is now admitted even by the petitioner after the note sheet is produced. The affidavit of the petitioner dated 11-12-2017 also does not make any attempt to explain the use of the word 'No personal hearing whatsoever was granted'. The next thing to be examined is whether the suppression of the fact of hearing being granted is material in the present facts. The impugned order cancels a certificate dated 24-5-2017 which has a limited life as it expires on 31-3-2018. Therefore, if the above certificate dated 24-5-2017 is cancelled without hearing then the most likely result in Court would be to set aside the impugned order and restore it for fresh consideration to respondent No. 1. This re-adjudication would take some time. Therefore, *ipso facto* the earlier certificate dated 24-5-2017 resulting in the withholding tax be paid at 0.39 per cent would be revived till fresh orders after hearing is passed under section 197.
- The petitioner states that it was a mistake on their part (advocate) while drafting the petition and the words 'whatsoever' was meant to convey that 'no effective opportunity of hearing was given'. The plain reading of the above words in the petition seems to suggest by the use of word 'whatsoever' that no hearing was ever granted. Needless to state that it is the responsibility of the petitioner to ensure that every material statement of fact stated in the petition as filed is correct and there is no suppression of material fact relating to the proceedings. The facts are only known to the petitioner and therefore, his obligation to ensure that facts are correctly represented in the petition.
- The only thing in support of the petitioner is that when the suppression is seen in the context of the fact, it is clear that at no time did the petitioner seek to obtain *ad interim*/interim relief on the basis of above averment without notice to the other side, it could be suggestive of a mistake. The orders passed from time-to-time showed that, from the 6-11-2017 onwards, when this petition was first moved, at no time did the petitioner seek any relief without notice to the other side. Therefore, the suppression may have been on account of mistake as it is unlikely to be made deliberately as it

would stand exposed on the other side having notice of the same. Admittedly, the petitioner in this case, has always moved the Court after notice to the respondents.

- In these circumstances, in the peculiar facts as recorded hereinabove, petitioner's prayer to withdraw the petition was to be allowed. However, the liberty as sought by the petitioner to file a fresh petition cannot, in these facts, be unconditional as the petitioner has not come with clear hands, *i.e.*, petition is soiled. It seems most likely in view of the course of the conduct after filing of the petition that the suppression of material fact was a mistake. A party should not suffer on account of what appears to be a mistake. The benefit of doubt is given to the petitioner in this case and would expect the petitioner to be more careful in future. Therefore, the liberty to file a fresh petition is granted.