

No TCS was required on amount collected by Zila Panchayat for issue of licence to collect 'Tahbazari'

Summary – The High Court of Allahabad in a recent case of Apar Mukhya Adhikari, (the Assessee) held that 'Tahbazari' does not come within ambit of section 206C(1C)

Facts

- The assessee was Apar Mukhya Adhikari, Zila Panchayat constituted under the Uttar Pradesh Kshetra Panchayts and Zila Panchayats Adhinyam, 1961. In order to regulate its functions, a policy was formulated whereby Tahbazari, Tahbazari-Vahan Stand and Balu-Morang, Gitti Bolder-Vahan Shulk is auctioned and authority letter is issued to the highest bidder.
- The Assessing Officer conducted a survey under section 133-B. It was noticed that there were three kinds of auctions; (i) Tahbazari (ii) Tahbazari-Vahan Stand (iii) Balu-Morang and Gitti Bolder-Vahan Shulk. The Zila Panchayat had issued licences to different persons (through tender and auction) for collection of Tahbazari etc.
- The Assessing Officer was of the view that the amount collected by the Zila Panchayat Fell under/within the scope of Tax collected at source (hereinafter referred to as 'TCS'). Thus, the Assessing Officer worked out the amount of short collection and amount of interest under section 206 (7) of the Act.
- The Tribunal confirmed order passed by the Assessing Officer.
- On appeal:

Held

- Under section 206C(1C) every person, who grants a lease or a licence is required to collect tax at the prescribed rate from the licensee for granting lease/licence or otherwise transferring any right or interest to any other person with respect to packing lot, toll plaza, mine or quarry.
- The Tahbazari is not an item which is provided under this section for collecting TCS. If a licence or lease is issued in favour of any other person for collecting the Tahbazari, it cannot be said that lessee is collecting toll on such licence or lease, as the case may be. We are required to construe the taxing provisions strictly and cannot give liberal interpretation to a taxing provision.
- Thus, it is held that toll plaza does not include Tahbazari inasmuch as there is no toll set up for collecting the Tahbazari when licence for collecting the Tahbazari is issued. The Tahbazari has different connotation and it is not a toll as held by the Tribunal. The view taken by the Tribunal that Tahbazari is nothing but a toll or it is not different from Toll Plaza cannot be accepted. Therefore, the impugned order is set aside and the appeal is allowed.