In the High Court of Judicature at Madras

Dated : 25.7.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.18887 of 2018 & WMP.No.22273 of 2018

1.M/s.SNJ Distillers Private Limited,
rep.by its Authorized Signatory
Mr.R.Anbalagan

2.M/s.Gaming India Distributor Limited,
rep.by its Authorized Signatory
Mr.R.Anbalagan ...Petitioners

Vs

1.The Director of Income Tax (INV),
No.46, Old No.108, Mahatma
Gandhi Road, Chennai-34.

2.The Deputy Commissioner of Income
Tax, Central Circle-II (1), Investigation
Wing, Room No.122, I Floor, No.46,
Mahatma Gandhi Road, Chennai-34.

3.The Assistant Commissioner of
Income Tax, Central Circle II(1),
No.46, Mahatma Gandhi Road,
Chennai-34.

4.The Deputy Commissioner of Income
Tax, Central Circle 25, Room No.331,
E2, ARA Centre, Jandewalan Extension,
New Delhi. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the 3rd respondent to consider and dispose of the representation of the 1st petitioner dated 14.10.2016 and reminder dated 04.7.2017 with regard to giving credit for the seized sum of Rs.50 Lakhs with effect from 12.5.2012 to the 1st petitioner.

For Petitioners : Mr.G.Thangapandian

For Respondents : Mr.A.N.R.Jayaprathap

ORDER

Mr.A.N.R.Jayaprathap, learned Standing Counsel accepts notice for the respondents. Heard both. In light of the limited relief sought for by the petitioners, the writ petition itself is taken up for final disposal even at the admission stage.

2. The petitioners seek a direction to the third respondent to dispose of the representation of the first petitioner dated 14.10.2016 with regard to giving credit for the seized sum of Rs.50 lakhs with effect from 12.5.2012 to the first petitioner.

3. The said sum of Rs.50 lakhs was seized from one Mr.Bilash Kathiwada. He stated that the money belongs to him. However, while passing the impugned order in respect of the first petitioner for the assessment year 2012-13 under Section 143(3) of the Income Tax Act, 1961, the Assessing Officer held that preponderance of probabilities shows that the unaccounted money belongs to the first petitioner being carried by their employee - the said Mr.Bilash Kathiwada and needs to be taxed in the hands of the first petitioner.

4. Accordingly, the assessment was completed and the said sum of Rs.50 lakhs was brought to tax. The first petitioner paid the tax on 30.6.2017 as computed in the assessment order. The first petitioner, even prior to payment of tax, made a representation on 14.10.2016 to the third respondent requesting to rectify the total tax credit, calculate the interest payable under Sections 234B and 234C of the said Act and pass necessary rectification order. After payment of tax on 30.6.2017, enclosing the payment challan, another representation dated 04.7.2017 was submitted to the third respondent, which was received in the office of the third respondent on 05.7.2017. In the said representation dated 04.7.2017, apart from other things, the first petitioner stated that they paid the entire demand based on the computation and after considering the tax credit of Rs.50 lakhs along with applicable interest under Sections 234A and 234B of the said Act, enclosed a copy of the tax paid challan to the tune of Rs.2,03,74,282/- and also sought to rectify the demand issued earlier. Since the said representations have not been considered, the petitioners are before this Court.

5. The learned counsel for the petitioners submits that the petitioners would be satisfied if the third respondent is directed to consider the said representations and pass orders on merits and in accordance with law.

6. In the light of the above limited relief sought for, the writ petition is disposed of by directing the third respondent to consider the said representations of the first petitioner dated 14.10.2016 and 04.7.2017 and pass orders on merits and in accordance with law within a period of three weeks from the date of receipt of a copy of this order. In the event the third

respondent requires any clarification, it is well open to the third respondent to afford an opportunity of personal hearing to the authorized representative of the first petitioner. The first petitioner is directed to enclose copies of the said representations along with a copy of this order and forward the same to the third respondent for effective compliance of the above direction. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To
1.The Director of Income Tax (INV), No.46, Old No.108, Mahatma Gandhi
Road, Chennai-34.

2.The Deputy Commissioner of Income Tax, Central Circle-II (1),
Investigation Wing, Room No.122, I Floor, No.46, Mahatma Gandhi Road,
Chennai-34.

3.The Assistant Commissioner of Income Tax, Central Circle II (1), No.46,
Mahatma Gandhi Road, Chennai-34.

4.The Deputy Commissioner of Income Tax, Central Circle 25, Room No.331,
E2, ARA Centre, Jandewalan Extension, New Delhi.

+1cc Mr.G.Thangapandian, Advocate sr.no.49676

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nr 11/08/2018