IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 9931 OF 2019

Quick Heal Technologies Ltd., .. Petitioner.
v/s.
The Union of India & Others .. Respondents.

Ms. Padmavati Patil i/b. CEN-EX Services, for the Petitioner.
Mr. Sham Walve with Mr. Pritish Chetterjee, for the Respondents.

CORAM: M.S.SANKLECHA &
NITIN JAMDAR, JJ.
DATE : 16th OCTOBER, 2019.

P.C:-

This Petition under Article 226 of the Constitution of India, seeks the following effective reliefs:-

"(a) that this Hon'ble Court be pleased to hold that sale of Shrink-Wrapped-packaged software on CD/DVD is Sale of Goods not subjected to 'TDS' U/Sec. 194J /194C of the Income Tax Act;

(b) that this Hon'ble Court be pleased to direct the Respondents No.2 (CBDT) to issue clarification as requested by the Petitioner-Company that sale of Shrink-Wrapped-packaged Software on CD/DVD is sale of goods not subjected to TDS under Sections 194J/ 194C of the Income Tax Act, 1961 and in spite of bringing to the notice of all Income Tax Authorities below the CBDT the Petitioner approached CBDT (i.e. Respondents No.2.) on at least six occasions and in spite of pursing the issue with Respondents No.2 i.e. CBDT, it failed to address the issue as requested by the Petitioner?"

2 At the hearing, Ms. Patil, learned Counsel appearing in support of the Petition, states that, she is not pressing prayer clause (a). This is advisedly so as the prayer seeks Advance Ruling by this Court that

no tax deduction at source under Section 194J/194C of the Income Tax Act, 1961 (the Act) can be made in respect of Shrink-Wrapped-packaged sold by them.

3 So far as prayer clause (b) is concerned, the Petitioner seeks a direction that the Central Board of Direct Tax (CBDT)should issue a direction to Shrink-Wrapped-packaged software on CD/DVD, cannot be subjected to tax deduction at source under Sections 194J/194C of the Act . In support of her aforesaid prayer, she relied upon Section119(1) of the Act, which reads as under:-

> *"119(1):- The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board."*
> *Provided that no such orders, instructions or directions shall be issued -*
>> *(a) so as to require any income tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or*
>> *(b) so as to interfere with the discretion of Commissioner (Appeals) in the exercise of his appellate functions."*

4 This prayer is in the nature of mandamus to the CBDT to deal with and dispose of the Petitioner's application that it is not liable to suffer any tax deduction at source by its customers. Before any such directions can be issued, the Petitioner has to establish his legal rights to such a relief and a legal duty on the other party (to whom directions/ mandamus is sought) to perform/ do what is sought by the Petitioner. In this case, the obligation to deduct tax at source under the Act is on the Petitioner's customers under Section 194C/194J of the Act. In all cases where it is of the view that the payment made is of the nature specified

under Sections 194C/194J of the Act, it is liable to deduct tax at source and pay it to the Revenue. This non-deduction of tax by the Petitioner's customers visits it with consequences under Section 201 of the Act. Therefore, in such a case, the legal right if any is of the customer who is required to deduct tax at source. In any case, there is no legal right in the Petitioner and/or its customers to compel the CBDT to give a ruling on the issue of tax deduction at source.

5 It is clear in terms of Section 119(1) of the Act, there is no duty cast upon the CBDT to issue clarification and decide the matters which would be essentially in the realm of adjudication before the authorities under the Act. The CBDT would also be barred for issuing of instruction in respect of the Petitioner's application b virtue of the proviso (a) to Section 119(1) of the Act. In view of the above, the writ of mandamus can not be issued, directing the CBDT to consider and decide Petitioner's representation/ application.

6 In the above circumstances, we decline to entertain this Petition.

7 Accordingly **Writ Petition dismissed.**

(NITIN JAMDAR,J.) **(M.S.SANKLECHA,J.)**