IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2020

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THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.P.No.8215 of 2020
and CMP No.22329 of 2019
in TCA No.803 of 2019

M/s BNY Mellon Technology Private Limited
(formerly known as iNautix Technologies
India Private Limited)
10th Floor, Tidel Park,
4, Canal Bank Road,
Taramani, Chennai - 600 113. ... petitioner

vs.

The Deputy Commissioner of Income-Tax,
Corporate Circle - 1(2),
Room No.613, 6th Floor, Wanaparthy Block,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034. ... Respondent

Prayer ::- Petition filed to direct the Respondent to refund the recovery of Rs.4,79,11,507 / - made in violation of the order of the Hon'ble High Court in TCA 803 of 2019.

For Petitioner : Mr.N.V.Balaji

For respondent : Mr.T.Ravi Kumar

ORDER

(Made by DR.VINEET KOTHARI, J.)

The Court was held by Video Conference, as per the Resolution of the Full Court dated 3 July 2020, by Judges at their respective residence and the counsel, staff of the Court appearing from their respective residences.

2.Heard Mr.N.V.Balaji for the petitioner/Assessee and Mr.T.Ravi Kumar for the respondent/Department.

3.Mr.N.V.Balaji has submitted that the Department has wrongly adjusted the refund due to the Assessment Year 2014-15 to the extent of Rs.5 crores after the court passed an order dated 23.10.2019, in the present TCA No.803 of 2019, that once the assessee deposits a sum of Rs.5 crores, the Revenue Department will not proceed to make any recovery for the Assessment Year 2014-15, involved in the present T.C.A.No.803 of 2019. The learned counsel for the assessee further submitted that the directed sum of Rs.5 crores was deposited by the assessee through challan on 12.12.2019 in pursuance of the court order dated 23.10.2019 and therefore, adjustments made by the respondent/Department to the tune of Rs.4.79 crores wrongly refers due to the assessee for the Assessment Year 2018-19 and 2019-20, vide Form 36AF annexed with the counter affidavit filed by the respondent/Department is incorrect and is in violation of the order passed by this court on 23.10.2019.

4. On the other hand, Mr.Ravikumar, learned counsel appearing for the Revenue Department explained through his counter and additional counter filed in the present CMP No.8215 of 2020 that the said adjustments was made in Covid times by Centralized Processing Centre, Bangalore and though the said adjustment or refund was for the Assessment Years 2018-19 and 2019-20 ought to have been made against the outsetting demand for the preceding Assessment Year viz., AY 2013-14, by technical, inadvertent and bona fide error, the same was shown to be adjusted against the demand for Assessment Year 2014-15 by CPC, Bangalore. The Department therefore seeks leave of this court to correct the statement of recovery and show the said adjustment of refund due for the AY 2018-19 and AY 2019-20 against the outsetting demand of AY 2013-14 with which the present appeal T.C.A.No.803 of 2019 is not concerned. He further admitted that no further recovery, besides the aforesaid sum of Rs.5 crores deposited on 12.12.2019 shall be undertaken, till the Tribunal decides the appeal of the assessee for AY 2014-15.

5. Considering the submissions made by the learned counsel for the respondent/Department, we are of the view that the error on the part of the Revenue Department though exercised against the order of the court dated 23.10.2019 is explained properly and it seems a bona fide error, the refund of tax due for AY 2018-19 and AY 2019-20 was shown against the demand outstanding for AY 2014-15, as is the demand for AY 2013-14.

6. The learned counsel for the Revenue Department has drawn our attention to the order dated 1.3.2018 passed under Section 220(6) of the Income Tax Act, under which para 3(iv) clearly specifies that the Department deserves the right to adjust any refund that may become due to the assessee during the above period. The said order passed for AY 2013-14 is not under challenge before us in any manner and we are concerned only with the appeal for AY 2014-15.

7. Accordingly, we do not find any deliberate disobedience on the part of the Revenue Department in the aforesaid adjustment of refund due to the assessee against the demand for AY 2013-14. However, we note the undertaking of the respondent Counsel that no further recovery from the assessee for AY 2014-15 shall be made without the leave of this court till the Tribunal decides the pending appeal of the assessee for AY 2014-15. The learned counsel for the Assessee brought to our notice that on account of the difference of opinion between the two members of the Bench of the Income Tax Appellate Tribunal, the said appeal has been now referred to the third member and the Vice President of the Income Tax Appellate Tribunal has been assigned with the case and is likely to take up the appeal expeditiously and decide the appeal of the assessee for the Assessment Year 2014-15, as soon as possible.

8. With these facts taken on record, we dispose of the miscellaneous petition, C.M.P.No.8215 of 2020 without any further direction. The final order of the Income Tax Appellate Tribunal whenever passed will be placed in the record of this court by the parties. There is no order as to costs in this petition.

(V.K.,J.) **(K.R.,J.)**
04.09.2020

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To
The Deputy Commissioner of Income-Tax,
Corporate Circle - 1(2),
Room No.613, 6th Floor, Wanaparthy Block,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

DR.VINEET KOTHARI, J.
and

KRISHNAN RAMASAMY, J.

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C.M.P.No.8215 of 2020

04.09.2020