IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 03.09.2021

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.17754, 17756, 17758, 17761, 17762, 17764 of 2021

W.P.No.17754 of 2021

M/s. Saipem India Projects Private Limited,
No. 4, Fourth lane, Yaralagadda Towers,
Nungambakkam High Road,
Chennai - 600 034
Represented by its Director
Mr. Kozhalmannam parameswaran Ramaswamy ... Petitioner in all writ Petition

Vs.

1. The Deputy Commissioner of Income-tax
International Taxation - 1(2),
BSNL Building, Tower 1,
Chennai 600 006.

2. The Commissioner of Income-tax,
International Taxation -1,
BSNL Building, Tower 1,
No.16, Greams Road,
Chennai 600 006.

3. The Deputy Director of Income Tax(TDS)
Centralized Processing Cell,
Aaykar Bhawan, Sector – 3,
Vaishali, Ghaziabad-201 010 ... Respondents

(3rd respondent has been suo-moto impleaded by this Court vide this order)

Writ petition filed under Article 226 of the Constitution of India for issuance of writ of Mandamus or any other appropriate writ order or direction to the first respondent to refund the tax of Rs. 8,02,746 determined in the giving effect order passed in F. No. AAAC17915F/2017-18 for AY 2010-11 dated 20.02.2018 along with interest under section 244A of the Act till the date of actual issuance / disbursement of such refund within such reasonable time.

W.P.No.17756 of 2021: Writ Petition filed under Article 226 of the constitution of India for issuance of writ of mandamus to direct the 1st Respondent to refund the tax of Rs.1,522,814 determined in the giving effect order passed in F.No.AAAC17915F/ 2017- 18 for AY 2011-12 dated 20.02.2018 along with interest under section 244A of the Act till the date of actual issuance/ disbursement of such refund within such reasonable time as this honble Court may think appropriate.

W.P.No.17758 of 2021: Writ Petition filed under Article 226 of the constitution of India for issuance of writ of mandamus to direct the 1st Respondent to refund the tax of Rs.2,543,182 determined in the giving effect order passed in F.No.AAAC17915F/ 2017- 18 for AY 2012-13 dated 20.02.2018 along with interest under section 244A of the Act till the date of actual issuance/ disbursement of such refund within such reasonable time as this honble Court may think appropriate.

W.P.NO.17761 of 2021:Writ Petition filed under Article 226 of the constitution of India for issuance of writ of mandamus to direct the 1st Respondent to refund the tax of Rs.3,024,277 determined in the giving effect order passed in F.No.AAAC17915F/ 2017- 18 for AY 2013-14 dated 20.02.2018 along with interest under section 244A of the Act till the date of actual issuance/ disbursement of such refund within such reasonable time as this honble Court may think appropriate.

W.P.No.17762 of 2021: Writ Petition filed under Article 226 of the constitution of India for issuance of writ of mandamus to direct the 1st Respondent to refund the tax of Rs.2,965,630 determined in the giving effect order passed in F.No.AAAC17915F/ 2017- 18 for AY 2014-15 dated 20.02.2018 along with interest under section 244A of the Act till the date of actual issuance/ disbursement of such refund within such reasonable time as this honble Court may think appropriate.

W.P.No.17764 of 2021: Writ Petition filed under Article 226 of the constitution of India for issuance of writ of mandamus to direct the 1st Respondent to refund the tax of Rs.2,588,689 determined in the giving effect order passed in F.No.AAAC17915F/2017- 18 for AY 2015-16 dated 20.02.2018 along with interest under section 244A of the Act till the date of actual issuance/ disbursement of such refund within such reasonable time as this honble Court may think appropriate.

For Petitioner : Mr.S.P. Chidambaram
In all W.Ps.

For Respondent : Ms.Hema Muralikrishnan
Standing Counsel (Income Tax)
in all W.Ps.

COMMON ORDER

Read this in conjunction with and in continuation of earlier proceedings made in the captioned writ petitions being common proceedings dated 26.08.2021, which reads as follows:

> 'Mr.S.P.Chidambaram, learned counsel for writ petitioner in all the six writ petitions is before this virtual Court.
>
> 2. Learned counsel submits that it is a case of refund with interest and learned counsel draws attention of this Court inter alia to page 330 of typed set of papers. Refund is sought with interest under Section 244A of the Income Tax Act, 1961.
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> 3. To be noted, there is a request from the writ petitioner for adjustment of refund towards pre-deposit in a appeal.
>
> 4. Be that as it may, Ms.Hema Muralikrishnan, Senior Standing counsel accepts notice on behalf of both the respondents in all the six writ petitions and requests for a week's time to get instructions and revert to this Court. Registry to show the name of Revenue counsel in the next listing.
>
> List in the Motion list on Friday i.e., 03.09.2021.'

2. Today, Ms.Hema Muralikrishnan, learned Senior Standing Counsel, who has accepted notice on behalf of two respondents, is before this Virtual Court.

3. Mr.S.P. Chidambaram, learned counsel for writ petitioner, who is before this Virtual Court, reiterates the earlier submissions.

4. With the consent of learned counsel on both sides i.e., learned counsel for writ petitioner and learned Revenue counsel, captioned main writ petitions are taken up.

5. Revenue has filed a counter affidavit and both sides are in agreement that Paragraph 4 of the counter affidavit seals the issue in the writ petition. Paragraph 4 of the counter affidavit of Revenue sworn to by the Deputy Commissioner of

Income Tax, International Taxation - 1(2), BSNL Building, Tower 1, No.16, Greams Road, Chennai - 600 006 reads as follows:

> '4. It is submitted that the writ filed before this Court is premature as the petitioner is supposed to apply for refund on TRACES portal first. Interest on the same shall be calculated and paid firstly from the date of filing of Form No.26B on TRACES to the date of payment along with the principal amount and then separately from the date of challan payment to the date of application via back end approval. The TRACES portal as on today does not have functionally for issuing interest on refund from the date of payment of challan. Therefore, it has to proceed as explained above. The petitioner, without adopting the clear path available for getting refund and interest on the same, has approached this Court prematurely. The petitioner may therefore be directed to seek the alternate and direct remedy available for the resolution of the issue raised before this Court.'

6. The above submission is recorded. However, there is one other issue. Learned Revenue counsel submits that the refund pertains to Tax Deducted at Source (TDS) and it is with the Centralized Processing Cell, Aaykar Bhawan, Sector - 3, Vaishali, Vaishali, Ghaziabad-201 010. Learned Revenue counsel very fairly submitted that the Officer incharge of the Cell is Deputy Director of Income Tax. Learned Revenue counsel also fairly submits that if this Court at its discretion suo-moto impleads the aforementioned Authority and Centre, she would accept notice and a time frame for refund with interest as in Paragraph 4 of the counter affidavit supra can be fixed. Therefore, Deputy Director of Income Tax, Centralized Processing Cell, Aaykar Bhawan, Sector - 3, Vaishali, Vaishali, Ghaziabad-201 010 is impleaded as the third respondent. Learned Revenue counsel accepts notice for the third respondent also.

7. In the light of the narrative thus far, the following order is passed:

a) Writ petitioner will do the needful qua refund qua third respondent within a fortnight from today i.e., by 17.09.2021.

b) The third respondent shall complete the exercise of refund as captured in paragraph 4 of the counter affidavit (extracted and reproduced supra elsewhere in this order) as expeditiously as possible and in any event within 12 weeks therefrom i.e., on or before 10.12.2021.

8. The above draws the curtains on the captioned writ petitions and this Court places on record its appreciation for the fair stand taken by the learned Revenue counsel.

In the light of the above, these writ petitions are disposed of. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

gpa

Note to office: Registry to carry out necessary and consequential amendments in the case file and ensure that the same is reflected before uploading this order (to be noted, show in the order also) and obviously when certified copies are issued.

To

1. The Deputy Commissioner of Income-tax
   International Taxation - 1(2),
   BSNL Building, Tower 1,
   Chennai 600 006.

2. The Commissioner of Income-tax,
   International Taxation -1,
   BSNL Building, Tower 1,
   No.16, Greams Road,
   Chennai 600 006.

3. The Deputy Director of Income Tax(TDS)
   Centralized Processing Cell,
   Aaykar Bhawan, Sector – 3,
   Vaishali, Ghaziabad-201 010

+1cc to Mrs.Hema Muralikrishnan, Advocate, S.R.No.44509

W.P.Nos.17754, 17756,17758,17761,17762,17764 of 2021

KSM(CO)
CB(17/09/2021)