IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2016

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.461 of 2016
and
WMP.No.300 of 2016

M/s.Maxcell Distributors
represented by its Managing Partner
Senthil Kumar ... Petitioner

Vs

The Assistant Commissioner (CT)
Nandanam Assessment Circle,
46, Greenways Road,
Chennai 600 028. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent herein in TIN/33581583152/2013-14 and quash the order dated 30.11.2015 passed therein.

For Petitioner : Mr.L.Murali Krishnan
For Respondent : Mr.V.Haribabu, AGP

O R D E R

By consent, this writ petition is taken up for final disposal.

2.Challenging the assessment order dated 30.11.2015 passed by the respondent for the year 2013-14, the petitioner has filed the present writ petition.

3.According to the petitioner, the petitioner is a wholesale dealer in cellular telephones and accessories. For the assessment year 2013-14, the petitioner duly filed its returns, which was processed and a notice dated 31.07.2015 came to be issued by the respondent. On receipt of the same, the petitioner filed its reply on 15.09.2015. Thereafter, the respondent passed an assessment order dated 30.11.2015 thereby directing the petitioner to pay tax amount of Rs.45,59,366/- and also levied penalty by observing that the petitioner failed to prove that the ITC for the discount was not availed and the goods were sold at a price higher than the purchase price. Aggrieved against the same, the petitioner is before this court.

4.Though the learned counsel for the petitioner raised various grounds challenging the order passed by the respondent, he ultimately submitted that if an opportunity is given to the petitioner, they would have substantiated their claim made under Section 19(20) of the Tamil Nadu Value Added Tax Act, 2006 by producing the auditor certificate received from their auditor before the authority concerned.

5.On the other hand, learned Additional Government Pleader who took notice for the respondent, submitted that the respondent before passing the impugned order, granted sufficient time to the petitioner for producing the required documents, but the petitioner failed to utilise the same. Therefore, the respondent has no other alternative except to pass the assessment order for the year in question.

6.I have considered the rival submissions made on both sides and perused the materials available on record.

7.Since the issue involved herein is relating to the claim under section 19(20) of the Act, this Court feels it appropriate to provide an opportunity to the petitioner to submit the auditor's certificate and other relevant documents for substantiating their case. Accordingly, the impugned order dated 30.11.2015 passed by the respondent relating to the year 2013-14 is set aside and the matter is remitted back to the respondent for passing fresh assessment order. The petitioner is permitted to produce the auditor's certificate and other relevant documents along with additional objections, if any, to the respondent within a period of two weeks from the date of receipt of a copy of this order. On filing of such documents, the respondent is directed to receive and consider the same and pass fresh assessment order for the year in question on merits and in accordance with law, after affording due opportunity of persona hearing to the petitioner, within a period of six weeks thereafter.

8.The writ petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner (CT)
Nandanam Assessment Circle,
46, Greenways Road,
Chennai 600 028.

+1 cc to Mr.L.Muralikrishnan Advocate sr.1084
+1 cc to Special Government Pleader sr.1363

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