IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2019

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.15809 of 2011
and
M.P.No.1 of 2011

Maxx Mobilink Pvt. Ltd.,
3-A, First Floor, Saena Circle,
29/3 (Old No.15) Duraisamy Road,
T.Nagar, Chennai-17
Rep. by Assistant Manager. ... Petitioner

Vs.

The Assistant Commissioner of Commercial Taxes,
T.Nagar (South) Circle,
Chennai-600 017. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, to call for the records of the respondent in TIN/33151542794/10-11 dated 26.05.2011 and quash the same.

For Petitioner : Ms.D.Nishanshiya Velankanni
for M/s.S.Ravee Kumar

For Respondent : Mr.V.Hari Babu
Additional Government Pleader (T)

ORDER

The challenge in this case is to a revision notice dated 26.05.2011 for the period 2010-2011.

2.Ms.D.Nishanshiya Velankanni for M/s.S.Ravee Kumar, learned counsel appearing for the petitioner argues that the notice reveals pre-determination of mind on the part of the assessing officer. She also attacks the notice on the ground that it has been issued on the same day as when an order under Section 22(2) of the Act has been passed. This, according to her, is contrary to the stipulation under Rule 10(11) of the Tamil Nadu

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Value Added Tax Rules, 2007 (in short Rules). The aforesaid Rule provides for method of selection of Returns by the Commissioner for detailed scrutiny and assessment.

3. The procedure for assessment is set out in terms of Section 22 of the Act. Pursuant to filing of a return, an order of assessment is to be passed/deemed to be passed in line with Section 22(2) accepting the returns filed by the petitioner, if they are found substantially in order and accompanied by proof of payment of tax as well as claim of exemption, if any. Thereafter 20% of the returns are to be selected on a stratified random sampling method for further detailed scrutiny. The details of the return selected are to be intimated to the assessing officers, and exhibited on the Notice Board of all assessment circles as well as on the departmental website. The respective assessing officers, thereafter will call for the accounts of the assessees in their jurisdiction for detailed scrutiny and pass appropriate orders. This procedure has not, according to her, been complied with in the present case.

4. Mr.V.Haribabu, learned Additional Government Pleader, appearing for the revenue, points out that the petitioner had approached this Court in W.P.No.9968 of 2011 challenging the assessments made by the assessing officer for the month of October 2010. While disposing the writ petition, this Court, by order dated 20.04.2011 set aside the impugned order leaving it open to the assessing officer to pass appropriate orders for the entire period of assessment, as per law. It is only pursuant thereto and in line with the aforesaid order that the assessing authority has passed an order under Section 22(2) of the Act, dated 26.05.2011, wherein he accepts the returns as filed by the petitioner/assessee. Thereafter, being of the view that the returns have not offered to tax the turn over in entirety, he issued the impugned pre-assessment notice. I find no legal infirmity in the notice under challenge and none is made out before me. The procedure as set out in Rule 10 cannot be strictly complied with in cases such as the present where the order/notice of assessments have been passed/issued as a consequence of an order by this Court.

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5.This writ petition is thus dismissed, though granting liberty to the petitioner to appear before the respondent on Monday, the 25th of November, 2019 at 10.30 a.m. without expecting any further notice in this regard, with its reply to the impugned notice and all documents in support of its contentions. The process of assessment shall be completed within a period of four weeks from date of conclusion of the personal

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hearing. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
The Assistant Commissioner of Commercial Taxes,
T.Nagar (South) Circle,
Chennai-600 017.

+1 cc to Mr.S.Ravee kumar Advocate sr95457

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aa25/11/2019

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