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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **12.06.2018**

CORAM:

THE HONOURABLE MR.JUSTICE **M.GOVINDARAJ**

W.P.(MD)No.12403 of 2018
and
W.M.P.(MD)No.11270 of 2018

M/s.Pavai Enterprises,
Rep. by its Proprietor,
N.Ayyappan ` : Petitioner

Vs.

The Commercial Tax Officer (ST),
Thanjavur - I Assessment Circle,
CT Buildings, Sachidananda Mooppanar Road,
Thanjavur. : Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the respondent in Tin No.3365 3802813/2013-2014, dated 30.04.2018 and quash the same as illegal, arbitrary and against the provisions of the Act.

For Petitioner : Mr.K.Soundararajan

For Respondent : Mr.A.Muthukaruppan,
Additional Government Pleader

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ORDER

The petitioner has come up with the present Writ Petition seeking for issuance of a Writ of Certiorari, to call for the records of the respondent in Tin No.3365 3802813/2013-2014, dated 30.04.2018 and quash the same as illegal, arbitrary and against the provisions of the Act.

2. The petitioner was served with a revision notice dated 27.02.2018 for certain defects. The main defect was that Annexure -II of Form-I Returns filed by the dealer revealed that some of the dealers have not accounted for the sales which were effected by the petitioner. In the impugned order, it was mentioned that Annexure was enclosed along with the revision notice. However, a

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reference to the Annexure in the revision notice does not disclose any detail. A final reminder notice was also issued to the dealer on 03.04.2018. But the dealer failed to file objections and hence, the impugned order came to be passed.

3. The grievance of the petitioner is that the Annexure with the revision notice does not contain any detail to submit an effective objection with regard to the same. Furthermore, no personal hearing was afforded to the petitioner. Therefore, the impugned order is liable to be set aside.

4. I have considered the rival contentions.

5. In similar circumstances, a Division Bench of this Court in a batch of Writ Appeals in ***W.A(MD).Nos.234 to 240 of 2015 [G.V.Cotton Mills (P) Ltd., Vs. The Assistant Commissioner (CT), Avarayampalayam Assessment Circle, Coimbatore]*** dated 16.03.2018, has held as under:-

Denial of Personal hearing:

> **"10.The respondent denied the appellant opportunity of hearing only on the ground that objection was not given to the pre-assessment notices. Even if objection was not given, still the assessing authority was expected to post the matter for hearing by issuing notice to the assessee. In case the assessee fail to appear, it is open to the assessment authority to pass orders on merits. We make the position clear that the failure to submit objection to the pre-assessment notice would not give a right to the Assessment Officer to deny opportunity of personal hearing to the assessee.**
>
> **11.The Hon'ble Supreme Court in *Swami Devi Dayal Hospital and Dental College Vs. The Union of India and others [2013 (10) Scale 608]* observed that even in the absence of a specific provision of giving hearing, the hearing is required is required in such cases, unless specifically excluded by a statutory provision."**

6. On a perusal of the impugned order, it is crystal clear that the respondent failed to afford personal hearing and furthermore, the Annexure to the revision notice does not contain any detail. In such circumstances, the finding of the Division Bench of this Court cited *supra* is squarely applicable to the case on hand. Therefore, the impugned order passed by the respondent is violative of principles of natural justice and hence, the same is liable to be set aside.

7. In the result, the Writ Petition is allowed and the impugned order dated 30.04.2018 is set aside. The matter is remanded back to the respondent for fresh consideration. The respondent is directed to furnish the details with regard to the Annexure to the revision notice mentioned in the impugned order

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and afford an opportunity of personal hearing to the petitioner and thereafter, pass orders on merits and in accordance with law, within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

To

The Commercial Tax Officer (ST),
Thanjavur - I Assessment Circle,
CT Buildings, Sachidananda Mooppanar Road,
Thanjavur.

+ 1 cc TO Mr.K.Soundararajan , Advocate in SR No. 67911
+ 1 cc TO The Special Government Pleader in SR No. 67998

SML
AE/SV MMS/SAR1/25.06.2018/3P/4C

Order made in
W.P.(MD)No.12403 of 2018
12.06.2018

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