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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.5690 of 2017
and
W.M.P.(MD)No.4534 of 2017

A.M.Ramakrishnan ... Petitioner

-Vs-

1.The Commissioner of Sales Tax,
Chennai.

2.The Assistant Commissioner of Sales Tax,
Assistant Commissioner (வ.வ)Office,
Chockikulam Taxation Circle,
Madurai-20. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the entire records from the second respondent pertaining to வ.வி.எண் 33415004484/2012-13, 2013-14, dated 27.02.2017, the TIN No.33415004484/2012-13, dated 23.11.2016, TIN No.33415004484/2013-14, dated 23.11.2016 and quash the same and consequently, direct the second respondent to conduct a fresh enquiry and written objection from the petitioner before passing order.

For Petitioner : Mr.R.Ramasamy
For Respondents : Mr.S.Dhayalan
Government Advocate

ORDER

Heard the learned counsel on either side.

2.The petitioner is running catering agency in the name and style of M/s.Meenakshi Caterers at Madurai. The Enforcement Wing Officers visited the petitioner's place of business. The petitioner had claimed before the officers that he was not maintaining any accounts manually. But then, all the information has been fed into the computer. The petitioner further claimed that the computer was corrupt. However, some information was retrieved from the system and it revealed that over a period of 23 days i.e., from 22.05.2013 to 31.05.2013 and again from 01.06.2013 to 14.06.2013, there was sales

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turnover to the tune of Rs.14,82,595-. Based on the one day sales turnover arrived at, annual turnover was worked out. Based on the report given by the Enforcement Wing Officers, notice was given to the petitioner and thereafter, the impugned order was passed. Questioning the same, this writ petition came to be filed.

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3.The learned Government Advocate submitted that no case has been made out for bypassing the alternative remedy. Though there is a substance in the stand taken by the learned Government Advocate, it is seen that no personal hearing was given to the petitioner herein. The impugned order reads that notice was issued to the dealer calling for objections and since no objections were filed, proposals set out in the show cause notice was confirmed.

4.The Hon'ble Division Bench of Madras High Court in the decision reported in [2019] 60 GSTR 418(Mad) (G.V.Cotton Mills (P) Ltd., V. The Assistant Commissioner(CT), Avarayampalayam Assessment Circle, Coimbatore) held as follows:-

> "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.
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> 11. The Supreme Court in Swami Devi Dayal Hospital and Dental College v. Union of India MANU/SC/0873/2013 : [2013] 10 Scale 608 observed that even in the absence of a specific provision of giving hearing, the hearing is required in such cases, unless specifically excluded by a statutory provision."

5.At this stage, the learned counsel for the petitioner submitted that the petitioner would remit a sum of Rs.40,000/- towards tax but without prejudice to their defence. This undertaking to remit 10% of the tax is recorded. Since the personal hearing was not afforded to the petitioner, the order impugned in the writ petition is quashed. The matter is remitted to the file of the second respondent to pass orders afresh in accordance with law. The petitioner shall remit a sum of Rs.40,000/- towards their tax liability within a period of three weeks from the date of receipt of a copy of this order. This remittance will be without prejudice to the petitioner's contentions. The petitioner is given four weeks time to offer his objections. If the second respondent is not satisfied with the petitioner's objections, the second respondent will afford an opportunity of personal hearing to the petitioner and

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thereafter, pass orders afresh in accordance with law. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Cs-I)

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/ /2021

Sub Assistant Registrar(CS)

RMI

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Commissioner of Sales Tax,
Chennai.

2.The Assistant Commissioner of Sales Tax,
Assistant Commissioner (வ.வ)Office,
Chockikulam Taxation Circle,
Madurai-20.

+1 CC to Mr.R.RAMASAMY, Advocate (SR-8132[F] dated 02/03/2021)

+1 CC to THE SPECIAL GOVERNMENT PLEADER(SR-8401[F] dated 03/03/2021)

Order made in
W.P.(MD)No.5690 of 2017 and
W.M.P.(MD)No.4534 of 2017
02.03.2021

PM(CO)
SRS (10/03/2021) 3P : 5C

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