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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 11.03.2021
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.11801 of 2017
and
W.M.P.(MD)No.9089 of 2017

M/s.Sashwath Constructions (P) Ltd.,
Represented by its Director A.Cahndramaouli,
28, Shanthi Niketan,
Melakkal Main Road,
Kochadai, Madurai ... Petitioner

-Vs-

The Commercial Tax Officer,
Madurai Rural (South) Assessment Circle,
Commercial Taxes Buildings,
Madurai-20.
... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in TIN 33875162438/2009-10, dated 19.05.2017 and quash the same as illegal, arbitrary and in violation of the principles of natural justice and direct the respondents to pass assessment order afresh after affording opportunity of being heard to the petitioner by considering the reply dated 29.04.2017 within such time as may be directed by this Honourable Court.

For Petitioner : Mr.S.Karunakar
For Respondent : Mr.G.Arjunan
Government Advocate

ORDER

Heard the learned counsel on either side.

2.The petitioner is an assessee registered with the respondent. The petitioner's place of business was inspected by the Enforcement Wing Officials on 29.07.2015 and 04.05.2016. Certain discrepancies were noticed. Based on the report of the Enforcement Wing Officials, pre-revision notice dated 31.01.2017 was issued that was in respect of the assessment year 2009-10. The petitioner received notice on 13.02.2017. However, there was some delay on the part of the petitioner in submitting their objections. The petitioner had submitted their objections only on 13.06.2017. It was sent by registered post and it was also received by the respondent. But in the mean while, the impugned order dated 19.05.2017 was also sent on

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the very same date ie., 13.06.2017. The petitioner assails this order primarily on the ground that personal hearing was not granted.

3.Though counter affidavit has been filed and the learned Government Advocate would call upon this Court to sustain the impugned order, in the light of the stand taken in the counter affidavit, I am of the view that the contention raised by the petitioner's counsel is rather formidable. Even if reply was not received by the respondent within time, the respondent was obliged to grant personal hearing.

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.The respondent authority is present before this Court through video conferencing. The officer states that she is ready to grant personal hearing to the petitioner on 24.03.2021 at 11.a.m. I make it clear that the petitioner will not receive any independent personal hearing notice. The petitioner has to appear on the said date along with the relevant records. I further make it clear that the petitioner cannot adopt any dragging on the tactics. On the said hearing date, all the materials will be placed before the respondent. It is open to the respondent to pass orders afresh in accordance with law.

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6.The order impugned in the writ petition is quashed. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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

The Commercial Tax Officer,
Madurai Rural (South) Assessment Circle,
Commercial Taxes Buildings,
Madurai-20.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-10453[F] dated 11/03/2021)

+1 CC to M/s.SPL GP (SR-10918[F] dated 12/03/2021)

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