BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.23678 of 2023
and
W.M.P.(MD)No.19851 of 2023

M/s.Sigma Fine Arts,
represented by its Proprietor K.Karuppasamy,
2/1073B, Vivekananda Colony,
Pallapatti, Sivakasi, Virudhunagar District. ... Petitioner

Vs.

The Deputy State Tax Officer,
Office of the Assistant Commissioner (ST),
Virudhunagar-III, Assessment Circle,
Commercial Tax Buildings, Virudhunagar. ... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorarified Mandamus,*** calling for the records in assessment orders issued by the respondent in GSTIN 33ASOPK5380M1Z7/2018-19, dated 28.02.2023 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice and to direct the respondent to pass assessment order afresh after affording an opportunity of being heard by considering the reply and records dated 16.05.2022 filed by the petitioner within such time as may be directed by this Court.

For Petitioner	:	Mr.N.Sudalaimuthu
For Respondent	:	Mr.A.K.Manikkam Special Government Pleader

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O R D E R

This writ petition is filed for writ of ***Certiorarified Mandamus,*** to quash assessment orders dated 28.02.2023 passed by the respondent as illegal, arbitrary and in violation of the principles of natural justice and to direct the respondent to pass assessment order afresh after affording an opportunity of being heard by considering the reply and records dated 16.05.2022 filed by the petitioner within such time as may be directed by this Court.

2. Admittedly the petitioner was issued with the show cause notice and the petitioner has also submitted a reply. According to the petitioner, the petitioner could not avail the personal hearing opportunity. Moreover, the

respondent had issued show cause notice under section 73, assessment was done under section 73, whereas the penalty is imposed under section 74. It is settled law under tax cases, the respondents cannot go over and above the show cause notice.

3. Therefore, this Court is inclined to quash the impugned assessment order and accordingly the impugned order is quashed. The petitioner is directed to submit a detailed reply along with evidence. The respondents shall afford one more opportunity of personal hearing to the petitioner. Thereafter, the respondents shall consider the entire records and pass orders. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

4. The Learned Special Government Pleader submitted that the petitioner may be directed to pay the Tax. However, the Learned Counsel appearing for the petitioner submitted that they have already paid the Tax, but

the same is disputed by the respondent. The petitioner is directed to submit evidence of payment of tax.

5.With the above said observation, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

27.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No

Tmg

To

The Deputy State Tax Officer,
Office of the Assistant Commissioner (ST),
Virudhunagar-III, Assessment Circle,
Commercial Tax Buildings, Virudhunagar.

S.SRIMATHY, J.

Tmg

W.P.(MD).No.23678 of 2023

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