BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.02.2025

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.A(MD)Nos.6 to 9 of 2025
and
C.M.P.(MD)Nos.35, 38, 40 and 41 of 2025

W.A(MD)No.6 of 2025:

M/s. Srinivas Fine Arts Private Limited,
Represented by its Authorized Signatory,
P.R.Kishore Kumar,
No.340/3, Keela Thiruthangal,
Sivakasi-626 130. ... Appellant

Vs.

The State Tax Officer (Review),
Office of the Joint Commissioner (ST) (Intelligence),
Virudhunagar (Intelligence),
Virudhunagar. ... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.28681 of 2024, dated 29.11.2024.

W.A(MD)No.7 of 2025:

M/s. Srinivas Fine Arts Private Limited,
Represented by its Authorized Signatory,
P.R.Kishore Kumar,
No.340/3, Keela Thiruthangal,
Sivakasi-626 130. ... Appellant

Vs.

The State Tax Officer (Review),
Office of the Joint Commissioner (ST) (Intelligence),
Virudhunagar (Intelligence),
Virudhunagar. ... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.28682 of 2024, dated 29.11.2024.

W.A(MD)No.8 of 2025:

M/s. Srinivas Fine Arts Private Limited,
Represented by its Authorized Signatory,
P.R.Kishore Kumar,
No.340/3, Keela Thiruthangal,
Sivakasi-626 130. ... Appellant

Vs.

The State Tax Officer (Review),
Office of the Joint Commissioner (ST) (Intelligence),
Virudhunagar (Intelligence),
Virudhunagar. ... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.28683 of 2024, dated 29.11.2024.

W.A(MD)No.9 of 2025:

M/s. Srinivas Fine Arts Private Limited,
Represented by its Authorized Signatory,
P.R.Kishore Kumar,
No.340/3, Keela Thiruthangal,
Sivakasi-626 130. ... Appellant

Vs.

The State Tax Officer (Review),
Office of the Joint Commissioner (ST) (Intelligence),
Virudhunagar (Intelligence),
Virudhunagar. ... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.28684 of 2024, dated 29.11.2024.

In all cases:

For Appellant :M/s.Lakshmi Gopinathan
for M/s.Polax Legal Solutions

For Respondent :Mr.R.Suresh Kumar
Additional Government Pleader

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COMMON JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

The present batch of writ appeals are filed against the common order, dated 29.11.2024, passed in W.P.(MD)Nos.28681 to 28684 of 2024.

2. The writ petitions were filed to quash the assessment orders, dated 09.10.2024 and consequently, to direct the respondent to reopen the proceedings by granting opportunity to the petitioner to produce all the documents.

3. After considering the citation in ***2021 SCC On Line SC 884*** in the case of ***Assistant Commissioner of State Tax and others Vs. Commercial Steel Limited,*** the Writ Court has held the present case will not come within the four parameters stated in the order passed by the Hon'ble Supreme Court. Hence, liberty was granted to approach the Appellate Authority by filing an appeal under Section 107 of Central Goods and Services Tax Act,2017. Aggrieved over the same, the present writ appeals are filed.

4. The contention of the appellant is that the Assessing Officer has failed to grant an opportunity of personal hearing, thereby, violating the principles of natural justice. The Learned Counsel appearing for the appellant had relied on the reply to show cause notice, wherein the assessee has prayed for dropping the proceedings and also prayed to grant personal hearing during the 2nd or 3rd week of June for their further explanation. The said portion of the

reply show cause notice is extracted hereunder:

> *"Kindly consider out submissions and drop further proceedings in this regard.*
>
> *We may be granted personal hearing during the 2nd or 3rd week of June for our further explanations."*

5.In spite of a specific request, the Assessing Officer failed to grant personal hearing. On the other hand, the Learned Additional Government Pleader appearing for the respondent submitted that while uploading the reply, the assessee also uploaded Form GST DCR – 06, dated 01.06.2024. In the serial No.7, the option for personal hearing is available and the petitioner has opted for "no". Hence, the Assessing Officer has not granted any personal hearing.

6. This Court is of the considered opinion when the assessee has opted for personal hearing, while submitting the reply, even though the assessee has ticked "no" in the Form, then the Assessing Officer ought to grant personal hearing by relying on the reply notice. Whenever two opinions are possible, the opinion which is advantageous to the assessee should be taken.

7. The next contention of the appellants is that the Assessing Officer has confirmed the show cause notice on the sole ground that the assessee has not submitted the "Bank Realization Certificate" for the export sales made by the assessee. The specific contention of the assessee is that the same was uploaded at the time of submitting the reply, for which the Learned Counsel appearing for the appellant had relied on the bank realization certificate annexed in the type set of papers which runs from pages 21 to 184. The Learned Counsel specifically submitted that the said copy was downloaded from GST portal only. For this contention, the respondents submitted that the said BRC was not submitted at the time of reply and also has not stated in the reply that the certificate was uploaded. And also submitted that it is question of fact which has to be adjudicated before the appropriate authorities and not in the writ petition.

8. The learned Counsel appearing for the appellant vehemently replied that the certificate was not asked for in the show cause notice at all. When the respondent has not sought for the same, there is no necessity for the assessee to state in the reply that the same was furnished. And also stated that it is for this purpose alone, the petitioner has sought for personal hearing. Had

the Assessing Officer granted personal hearing, the same would have been explained by the assessee. Therefore, the order passed by the Assessing Officer without affording personal hearing is in violation of principles of natural justice.

9. In fact, the Learned Single Judge has relied on the above cited judgment rendered in the case of ***Assistant Commissioner of State Tax and others Vs. Commercial Steel Limited*** reported in ***2021 SCC On Line SC 884,*** wherein it has been stated that the writ petitions are maintainable under Article 226 of the Constitution of India against the assessment orders, if there is breach of fundamental rights or violation of principles of natural justice or excess jurisdiction or there is challenge to the vires of the statute or delegated legislation. This Court has held there is violation of principles of natural justice and therefore, the said judgment is squarely applicable to the present case.

10. Therefore, the writ appeals are allowed and the orders passed in the writ petitions are set aside. The assessment orders passed by the respondent are set aside and the matter is remitted back to the Assessing Officer. The Assessing Officer is specifically directed to verify the bank realization

certificate that has been uploaded in the GST portal. Further the Assessing Officer shall grant personal hearing to the writ petitioner. The writ petitioner is permitted to furnish the bank realization certificate as well as any other document that the assessee is intended to furnish. The assessment may be completed within a period of 4 months from the date of receipt of a copy of this judgment.

11. With the above said observations, the writ appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

[J.N.B., J.] **[S.S.Y., J.]**
27.02.2025

Index : Yes / No

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To:

The State Tax Officer (Review),
Office of the Joint Commissioner (ST) (Intelligence),
Virudhunagar (Intelligence),
Virudhunagar.

J.NISHA BANU, J.

and

S.SRIMATHY, J.

Tmg

W.A(MD)Nos.6 to 9 of 2025

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