IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.02.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.Nos.4795, 4799, 4803, 4813 & 4815 of 2024
and W.M.P.Nos.5231, 5232, 5222, 5233, 5249, 5250, 5252, 5255, 5226 & 5227 of 2024

M/s.Green Eco Enterprises
Rep. by its Proprietor Firoz Khan Malik
No.66, Ground Floor, Washerman Street,
Chintadripet, Chennai 600 002. ... Petitioner in all WP's

-vs-

Deputy State Tax Officer,
State Commercial Taxes Department,
Chintadripet Assessment Circle,
Chennai. ... Respondent in all WP's

PRAYER in W.P.No.4795 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in the Impugned Order vide Reference GSTIN: 33ACKPF8237G2ZN / 2020-21 dated 31.07.2023 and quash the same and consequently, direct the respondent to defreeze the bank accounts of the petitioner.

PRAYER in W.P.No.4799 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in the Impugned Order vide Reference GSTIN: 33ACKPF8237G2ZN / 2021-22 dated 31.07.2023 and quash the same and consequently, direct the respondent to defreeze the bank accounts of the petitioner.

PRAYER in W.P.No.4803 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in the Impugned Order vide Reference GSTIN: 33ACKPF8237G2ZN / 2019-20 dated 31.07.2023 and quash the same and consequently, direct the respondent to defreeze the bank accounts of the petitioner.

PRAYER in W.P.No.4813 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of

Certiorarified Mandamus, calling for the records of the respondent in the Impugned Order vide Reference GSTIN: 33ACKPF8237G2ZN / 2022-23 dated 31.07.2023 and quash the same and consequently, direct the respondent to defreeze the bank accounts of the petitioner.

PRAYER in W.P.No.4815 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in the Impugned Order vide Reference GSTIN: 33ACKPF8237G2ZN / 2018-19 dated 31.07.2023 and quash the same and consequently, direct the respondent to defreeze the bank accounts of the petitioner.

For Petitioner in all WP's	:	Mr.P.Jitendra Kumar
For Respondent in all WP's	:	Mr.V.Prasanth Kiran, GA (T)

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COMMON ORDER

By these writ petitions, the petitioner assails assessment orders in respect of distinct assessment periods on the ground of breach of principles of natural justice.

2. The petitioner states that he is not conversant with compliances under the GST regime and that such compliances were handled by a consultant. He further asserts that he was unaware about the proceedings culminating in the impugned assessment orders until his bank accounts were subject to freezing orders. He also asserts that the intimation and notices were uploaded on the view additional notices and orders tab in the GST portal.

3. Learned counsel for the petitioner contends that the petitioner was held liable by invoking Section 74 of the State Goods and Services Tax Act, 2017 although the ingredients of such provision are not made out in the orders impugned herein. He also submits that the petitioner is continuing to carry on business and is in possession of documents to establish that the availment of ITC was genuine. Therefore, he makes a request for an opportunity to place all relevant documents before the assessing officer.

4. Mr.V.Prasanth Kiran, learned Government Advocate, accepts notice for the respondent. He contends that the petitioner, Mr.Firoz Khan Malik, Proprietor, M/s.Green Eco Enterprises, and the petitioner in matters listed as item no.4 today are near relatives. By drawing reference to the assessment order in W.P.No.4801 of 2024, learned counsel points out that the assessee submitted a reply on 06.07.2023. According to learned counsel, this indicates clearly that the assessees in both batches of matters were accessing the GST portal and that the reasons set out in the respective affidavits are not true. He further submits that adequate conditions may be imposed to safeguard revenue interest if the Court is inclined to provide another opportunity to the petitioner.

5. The assessment order indicates that proceedings were initiated against the petitioner by issuing a notice in Form GST ASMT-10 in respect of discrepancies in the returns filed by the

petitioner. Thereafter, an intimation was issued and this was followed by the show cause notice. It also appear that three personal hearing notices were issued. In fact, learned Government Advocate points out that notice in Form GST ASMT-10 was sent by RPAD and receipt thereof was acknowledged by the petitioner.

6. The assessment orders were issued on 31.07.2023, but the petitioner has approached this Court in late February 2024 after the bank accounts of the petitioner were attached. The documents on record clearly indicate that the petitioner was negligent in not contesting the assessment proceedings until orders of attachment were issued. However, it is equally clear that the orders impugned herein were issued without hearing the petitioner. In these circumstances, solely with the view to provide an opportunity to the petitioner to contest the tax demands, interference with the impugned orders is warranted subject to putting the petitioner on terms. Learned counsel for the petitioner, on instructions, submits

that the petitioner agrees to remit 12.5% of the disputed tax demand under each assessment order as a condition for remand.

7. Hence, the impugned assessment orders are quashed and the matters are remanded for re-consideration subject to the condition that the petitioner remits 12.5% of the disputed tax demand in each assessment order within a period of ***two weeks*** from the date of receipt of a copy of this order. The petitioner is also permitted to submit a reply to the show cause notice within a period of ***three weeks*** from the date of receipt of a copy of this order. Upon receipt of the petitioner's reply and upon being satisfied that 12.5% of the disputed tax demand in each assessment order was received, the assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue fresh assessment orders within a maximum period of ***four months*** therefrom. In view of the assessment orders being quashed, the impugned bank attachments shall stand raised subject to the caveat

that the respondent may issue fresh attachment orders if the conditions specified above are not complied with.

8. W.P.Nos.4795, 4799, 4803, 4813 and 4815 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.5231, 5232, 5222, 5223, 5249, 5250, 5252, 5255, 5226 and 5227 of 2024 are closed.

28.02.2024

rna
Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

To

Deputy State Tax Officer,
State Commercial Taxes Department,
Chintadripet Assessment Circle,
Chennai.

SENTHILKUMAR RAMAMOORTHY,J

rna

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and W.M.P.Nos.5231, 5232, 5222, 5233, 5249, 5250, 5252, 5255, 5226 & 5227 of 2024

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