IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **29.04.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

**Writ Petition Nos.11181, 11184, 11196 & 11201 of 2024 and W.M.P.Nos.12252 to 12254, 12259, 12262, 12265, 12276 to 12278, 12281, 12283, 12285 of 2024**

**In all WPs.**

Lakshmi and Co.,
Represented by its Proprietor,
Mr.K.Madheshwaran,
No.19, Kannaiamman koil street,
Nandhavana Mettur,
Avadi, Chennai-600 071. ... Petitioner

-vs-

1. The Assistant Commissioner (ST),
Avadi Assessment Circle,
Integrated Commercial Taxes Building (North Division),
First Floor, Room No.124,
Elephant Gate Bridge Road,
Vepery, Chennai-600 003.

2. The Branch Manager,
ICICI Bank Limited,
No.3, Main Road, Kamaraj Nagar,
Avadi, Chennai-600 071. .. Respondents

**Prayer in W.P.No.11181 of 2024:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for records in Reference No.ZD331123060494Q/2017-2018 dated 10.11.2023 on the file of the 1st respondent and quash the same as contrary to law, consequently direct the 1st respondent to defreeze the bank attachment in Reference No.GSTIN/33BIMPM0046F2ZJ/2017-2018 dated 21.03.2024 of the petitioner-registered taxable person.

**Prayer in W.P.No.11184 of 2024:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for records in Reference No.ZD331123060669F/2018-2019 dated 10.11.2023 on the file of the 1st respondent and quash the same as contrary to law, consequently direct the 1st respondent to defreeze the bank attachment in Reference No.GSTIN/33BIMPM0046F2ZJ/2018-2019 dated 21.03.2024 of the petitioner-registered taxable person.

**Prayer in W.P.No.11196 of 2024:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for records in Reference No.ZD331123048620X/2019-2020 dated 08.11.2023 on the file of the 1st respondent and quash the same as contrary to law, consequently direct the 1st respondent to defreeze the bank attachment in Reference No.GSTIN/33BIMPM0046F2ZJ/2019-2020 dated 21.03.2024 of the petitioner-registered taxable person.

**Prayer in W.P.No.11201 of 2024:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for records in Reference No.ZD331123049355P/2020-2021 dated 08.11.2023 on the file of the 1st respondent and quash the same as contrary to law, consequently direct the 1st respondent to defreeze the bank attachment in Reference No.GSTIN/33BIMPM0046F2ZJ/2020-2021 dated 21.03.2024 of the petitioner-registered taxable person.

**In all WPs.**

For Petitioner : Mrs.V.Vijayalakshmi

For R1 : Mr.V.Prashanth Kiran, Govt. Adv. (T)

**COMMON ORDER**

By these four writ petitions, orders in original pertaining to assessment periods 2017-2018 to 2020-2021 are challenged on the ground that the petitioner did not have a reasonable opportunity to contest the tax demands on merits.

2. The petitioner is engaged in the business of man power supply relating to cleaning, ripening, sorting and packing of groceries, fruits and vegetables. The petitioner asserts that he was unaware of proceedings culminating in orders impugned herein since he was under complete bed rest on doctor's advice from September 2023. The present writ petitions were filed in the said facts and circumstances.

3. Learned counsel for the petitioner submits that an exemption has been provided under Notification No.11/2017-Central Tax (Rate) dated 28.06.2027 (Notification No.11/2017) as regards services relating to packing, labeling etc. of fruits and vegetables. As regards man power services pertaining to fast moving consumer goods, she submits that

exemption does not apply. She also points out that pursuant to orders impugned herein, the bank account of the petitioner was attached and a sum of Rs.4,44,025/- was appropriated therefrom. According to her, this amount would cover a substantial portion of 10% of the disputed tax demand. On instructions, she submits that the petitioner would make good the short fall between the amount appropriated and 10% of the disputed tax demand.

4. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the 1st respondent. He points out that the impugned orders were preceded by notices in Form ASMT 10, show cause notices dated 16.08.2023 and reminders in respect of personal hearings.

5. On examining the orders impugned herein, it is evident that the tax proposals pertain to the discrepancy between the petitioner's GSTR 3B returns and Form 26AS. Such proposal was confirmed because the petitioner did not reply to the show cause notice. Learned counsel for the petitioner relies on Notification No.11/2027 to contend that a part of the services provided by the petitioner are exempt from GST. In these

circumstances, albeit by putting the petitioner on terms, it is just and necessary to provide an opportunity to the petitioner to contest the tax demands on merits.

6. For reasons aforesaid, the impugned orders are set aside subject to the condition that the petitioner remits 10% of the disputed tax demand in respect of each assessment period as agreed to after giving credit to the sum of Rs.4,44,025/- appropriated from the petitioner's bank account. Such remittance shall be made 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 respective show cause notice within the aforesaid period. Upon receipt of the petitioner's reply and upon being satisfied that 10% of the disputed tax demand was received in respect of each assessment period, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue fresh orders within three months from the date of receipt of the petitioner's reply. As a consequence of the orders in original being set aside, the bank attachment is raised.

7. These writ petitions are disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

**29.04.2024**

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

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To

The Assistant Commissioner (ST),
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**SENTHILKUMAR RAMAMOORTHY,J**

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