In the High Court of Judicature at Madras

Dated : 28.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.11061 to 11063 of 2018
& WMP.Nos.12965 to 12967 of 2018

Tvl.Alkareem Chicken Cuisine,
rep.by its Proprietor ...Petitioner in both WP.Nos.11061 & 11062 of 2018

Tvl.Alkareem Chicken Crust, rep.
by its Proprietor ...Petitioner in WP. No.11063 of 2018

Vs

1.The Commercial Tax Officer,
Cuddalore Town. ...R1 in both WP. Nos.11061& 11062 of 2018

2.The Assistant Commissioner (CT)
(FAC), Cuddalore Town. ...R1 in WP.No. 11063 of 2018

3.The Joint Commissioner (ST),
Vellore Division, Vellore. ...R2 in all the WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records of the first respondent in orders in TIN No.33094384733/2014-15, TIN No. 33094384733/2015-16 and TIN.No.33694384015/2014-15, all dated 27.1.2017, quash the same and further direct the first respondent to reconsider the petitioners' individual representations dated 23.12.2016 under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 on merits and in accordance with law.

For Petitioners : Mr.Adithya Reddy
For Respondents : Mrs.G.Dhana Madhri, GA

COMMON ORDER

Mrs.G.Dhana Madhri, learned Government Advocate accepts notice for the respondents. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioners are aggrieved by the orders dated 27.1.2017 passed by the respective first respondent - Assessing Officer rejecting their petitions under Section 84 of the Tamil Nadu Value Added Tax Act, 2006.

3. According to the petitioners, while filing their monthly returns for the assessment years concerned, their Accountant wrongly mentioned the turnover as Rs.25 lakhs whereas their actual monthly gross sales is less than Rs.1 lakh only. Hence, by filing the petitions dated 23.12.2016, the petitioners sought permission to revise the monthly returns in Form L for the assessment years concerned. The respective first respondent rejected the said petitions by orders dated 27.1.2017 on the ground that there was no error in the original orders of assessment already passed dated 31.10.2016. The petitioners filed revision petitions dated 05.7.2017 before the second respondent challenging the correctness of the original orders of assessment passed by the Assessing Officer dated 31.10.2016. They were also rejected by the second respondent stating that the revision petitions were not maintainable. Hence, the petitioners are before this Court.

4. The stand taken by the second respondent is correct since the revision petitions were not maintainable under Section 54 of the said Act. Had the petitioners restricted their challenge to the orders dated 27.1.2017 passed under Section 84 of the said Act, probably the Joint Commissioner might have entertained the revision petitions.

5. This Court has examined the contentions raised in the petitions dated 23.12.2016 filed under Section 84 of the said Act, in which, the petitioners pleaded that a mistake had done by the Accountant. However, the Assessing Officer did not consider the said plea raised by the petitioners. The petitioner also should be blamed partially for not producing the bills and the books of accounts.

6. The learned counsel for the petitioners pleads that the petitioners are small restaurants in Cuddalore town and that if one opportunity is granted to them, they will produce the bills and books of accounts to establish that their turnover is approximately Rs.1 lakh.

7. Considering the facts and circumstances of the case, this Court is inclined to grant one opportunity to the petitioners.

8. Accordingly, the writ petitions are disposed of with a direction to the petitioners to file fresh petitions under Section 84 of the said Act before the respective first respondent clearly stating as to how the alleged mistake had occurred. The petitioners shall enclose a copy of this order along with the petitions under Section 84 of the said Act. On receipt of such petitions, the respective first respondent is directed to summon the petitioners to appear in person before him and produce the books of accounts and other documents in

support of their claim. If the petitioners produce proof to show that their actual monthly gross sales is approximately Rs.1 lakh, the first respondent is directed to pass fresh orders on the said petitions on merits and in accordance with law. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To
1.The Commercial Tax Officer, Cuddalore Town.
2.The Assistant Commissioner (CT) (FAC), Cuddalore Town.
3.The Joint Commissioner (ST), Vellore Division, Vellore.

+1cc to Government Pleader(Taxes) sr.no.32679

WP.Nos.11061 to 11063 of 2018&
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svi(co)
nr 22/05/2018