IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.32377 of 2018
and
W.M.P.No.37572 of 2018

Tvl.Alkareem Chicken Crust
Represented by its Proprietor
73, Nethaji Road,
Cuddalore - 607 001. ... Petitioner

vs.

1. The Commercial Tax Officer
Cuddalore (Town) 607 001.

2. The Joint Commissioner (ST)
Vellore Division,
Vellore - 632 001. ...Respondents

Writ petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in order dated 27.01.2017 in TIN No.33694384015/2015-2016 and quash the same and further direct the 1st respondent to reconsider the petitioner's representation dated 23.12.2016 under Section 84 of the TNVAT Act, on merits and in accordance with law.

For Petitioner : Mr.Adithya Reddy

For Respondents: Mrs.G.Dhana Madhri
Government Advocate

O R D E R

Mrs.G.Dhana Madhri, learned Government Advocate takes notice for the respondents. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order dated 27.01.2017 passed by the first respondent in rejecting the petitioner's application filed under Section 84 of the Tamil Nadu Value Added Tax Act, 2006.

3. Heard both sides.

4. The only grievance expressed before this Court is that the first respondent has mechanically rejected the application, by simply saying that there was no error or mistake in the order, without discussing any of the contentions raised in the rectification application filed under Section 84 of the TNVAT Act, 2006. Therefore, it is stated that the impugned order was passed with non-application of mind.

5. On the other hand, the learned Government Advocate submitted that since the petitioner has failed to file their reply to the original notice of proposal, they are not entitled to raise all these objections in the application filed under Section 84 of the TNVAT Act, 2006.

6. There is no dispute to the fact that in pursuant to the order of assessment dated 31.10.2016, the petitioner filed the application under Section 84 of the TNVAT Act, 2006, on 23.12.2016. Perusal of the said application would show that the petitioner has raised some grounds for rectification. Whether those grounds are sustainable or not, is for the first respondent to consider and decide. Therefore, this Court is not expressing any view on the same at present, however, the question is whether the first respondent had applied his mind to the grounds raised in the said application, while rejecting the same through the impugned order. Perusal of the impugned order would show that nothing is indicated therein with regard to the points raised by the petitioner in the rectification application and the reason for rejecting those contentions, except stating that there was no error or mistake in the order already passed on 31.10.2016. The first respondent did not give any reason or finding as to how such rectification application is liable to be rejected. Therefore, this Court is of the view that the Assessing Officer viz., the first respondent has to re-consider the rectification application and pass fresh orders on merits and in accordance with law.

7. Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the matter is

remitted back to the first respondent/Assessing Officer to pass fresh orders on the rectification application filed under Section 84 of the TNVAT Act, 2006, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mk

To

1. The Commercial Tax Officer
Cuddalore (Town) 607 001.

2. The Joint Commissioner (ST)
Vellore Division,
Vellore - 632 001.

+1cc to Mr.Adithya Reddy, Advocate Sr.84278
+1cc to the Special Government Pleader Sr.84692

WP. No.32377 of 2018

ad[co]
srg 02/01/2019