IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.15627 of 2016
and
W.M.P.No.13580 of 2016

Micro Pixel Private Ltd.,
Rep by its Director
Mr.Srikanth
C-19, Industrial Estate
Ekkattuthangal
Chennai - 600 097. .. Petitioner

..Vs..

The Commercial Tax Officer
Guindy Assessment Circle
46, Greenways Road
Taluk Office Building
R.A.Puram
Chennai - 600 028. .. Respondent

Prayer:
Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records on the file of the respondent herein in TIN:33560900574/2014-15, dated 29.03.2016 and quash the same.

For Petitioner : Mr.N.Inbarajan

For Respondents : Mr.Manoharan Sundaram, A.G.P.,

ORDER

Heard Mr.N.Inbarajan, learned counsel appearing for the petitioner, and Mr. Manoharan Sundaram, learned Additional Government Pleader appearing for the respondents and with their consent, the writ petition itself is taken up for final hearing.

2.The petitioner is the registered dealer under the provisions of the Value Added Tax Act, 2006. The petitioner has filed this writ petition challenging the order of assessment dated 29.03.2016, in and by which the input tax credit availed by the petitioner has been reversed and penalty has been imposed. The pre-assessment notice was issued on 01.03.2016

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stating that the petitioner is involved in manufacturing activity of goods and they make direct sales of the finished products to 100% Export Oriented Units and therefore the sales become the first at the hands of the dealers and not the last sale as specified under Section 5(3) of the CST Act, 1956. Further, it was stated that the petitioner could not obtain and produce form H from the exporters. Hence, the ITC availed by the petitioner in respect of the sales made to 100% Export Oriented Units needs to be reversed. Apart from that, the respondent also proposed to levy penalty under Sec.27(3)/27(4) of the TNVAT Act.

3.The petitioner submitted a reply on 17.03.2016 raising several grounds and referred to the decision of this Court in the case of Emerald Stone Export v. Assistant Commissioner (CT), FAC, Pudukottai reported in (2012) 52 VST 286 (Mad). The petitioner would state that admittedly they have sold the goods to an exporter and the exporter have exported the same goods. Therefore, their sale is the last sale preceding to the export sales and squarely falls under Section 5(3) of the CST Act, 1956. Further, it was stated that in respect of the previous years, they have filed appeals before the appellate authority and they have requested the respondent to wait till the appeals are disposed of. The respondent, after considering their objections held that the sales effected by the petitioners are not zero rated sales falling under Section 18(1) of the TNVAT Act, 2006 and they are not eligible for ITC or refund of the tax paid on the purchase of goods including the capital goods. Further, it was pointed out that they have not produced form H to establish their case.

4.Considering the fact that the petitioner has placed reliance on the decision of this Court made in the case of Emerald Stone Export (Supra) what was required to be considered by the assessing officer is as to whether the sale effected by the petitioner was the last sale preceding the sale occasioning the export of goods out of the territory of India. This could have been established by the petitioner by appearing in person before the respondent and producing the necessary records.

5.It is seen that while submitting the objections to the pre-assesment notice, the petitioner in their letter dated 17.03.2016 had requested for personal hearing in the subject column itself, though not in the body of the letter. Therefore, the respondent ought to have afforded an opportunity of personal hearing to the petitioner and thereafter, proceed to complete the assessment.

6.In the light of the above, the writ petition is allowed and the impugned order is set aside. The matter is remanded to the respondent for fresh consideration who shall afford an opportunity of personal hearing to the petitioner, peruse the

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documents if any produced by the petitioner and pass a speaking order as expeditiously as possible. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

pgp

To

The Commercial Tax Officer
Guindy Assessment Circle
46, Greenways Road
Taluk Office Building
R.A.Puram
Chennai - 600 028.

1 cc to M/s.N.Inbarajan, Advocate, sr.30398
1 cc to Special Government Pleader,(Taxes), sr.30765

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