IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM.

Writ Petition No.2119 of 2017
and W.M.P.No.2084 of 2017

Schneider Electric India Pvt. Limited,
Represented by its Manager-Finance Mr.B.Suresh,
No.172, Poonamallee Bye Pass Road,
Poonamallee,
Chennai - 600 056. ... Petitioner

vs

The Assistant Commissioner (CT) (FAC)
Ambattur Assessment Circle,
No.127, 1st Floor, Yadhaval Street, Padi,
Chennai - 600 050. ... Respondent

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records relating to the Assessment Order in CST/796245/2012-13 dated 09.01.2017, passed by the Respondent, quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.Joseph Prabakar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice for the respondent. With the consent of either side, the writ petition itself is taken up for disposal.

2.The petitioner who is the registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act (TNVAT Act) and the Central Sales Tax Act (CST Act) is before this Court challenging an order of the assessment under the CST Act for the year 2012-13. The primary ground on which the petitioner has challenged the impugned order is by contending that an opportunity of personal hearing was not granted as required to be granted under section 27 of the TNVAT Act. Secondly, it is contended that without conducting an enquiry, the impugned order has been passed.

3.The case of the petitioner is that for the assessment year 2012-13 under the CST Act, they claimed exemption under section 5(1) of the CST Act claiming that they have exported goods worth Rs.1,46,86,92,249/- and submitted documents in support of such claim. These were considered by the then Assessing Officer and an order was passed on 26.08.2016 stating that the petitioner has filed copy of sales invoices, copy of the shipping bills for export and copy of the bank realization statements and therefore, those records are sufficient to hold that the goods have been actually exported outside the Country. Thus, qualifying for the benefit under section 5(1) of the CST Act. With regard to the other issues as raised in the said notice dated 26.08.2016, the petitioner submitted their objections on 17.11.2016. While the matter stood thus, it appears that the new Assessing Officer took over as the Assistant Commissioner of the Ambattur Assessment Circle, had issued a revised notice dated 14.12.2016. Among other things, it was pointed out that the petitioner has claimed exemption on the turnover Rs.1,46,86,92,249/- towards the direct export sales under section 5(1) of CST Act, but have not filed copies of invoices, purchase orders, packing list, Bills of entry, etc., for the said turnover and in the absence of such vital documents they are not eligible to claim the exemption. Hence the respondent proposed to disallow the claim of exemption on direct export sales and assess the petitioner at a higher rate of tax at 14.5%. The petitioner was granted time to submit their objections.

4.With regard to the direct export sales, the petitioner stated that they have filed the details for the entire direct export which was accepted by the the Assessing Officer and affirmed in his notice dated 26.08.2016. However, enclosing all the details once again, requested the respondent to grant exemption on the said turnover. The objections were given in respect of the other defects which were pointed out by the respondent in the revised notice dated 14.12.2016. The respondent without affording an opportunity of personal hearing to the petitioner has passed the impugned order dated 09.01.2017. On perusal of the impugned order, it is seen that in respect of the exemption claim on direct export sales to the tune of Rs.1,46,86,92,249/-, the respondent has given the benefit of exemption on direct export sale covering the turnover of Rs.30,28,42,120/- alone and rejected the claim for the remaining turnover of Rs.1,16,58,50,129/- on the ground that they are not covered by any supporting documents relating to direct exports sales. The petitioner's case is that all documents have been placed not only before the earlier officer but as well as before the respondent and if the respondent had afforded an opportunity of personal hearing, the petitioner would have been able to reconcile and show all the documents which are voluminous.

5.Considering the complexity of the transaction and the large turnover involved, this Court is of the view that the respondent Assessing Officer should have afforded an opportunity of personal hearing, especially when the present assessment order is pursuant to the revised notice issued by him dated 14.12.2016. When the fact remains that the earlier officer while issuing his notice dated 26.08.2016 in no uncertain terms stated that the records filed by the petitioner are sufficient to hold that the goods have been actually exported outside the Country and granted exemption claim on direct export sales for the entire amount claimed by the petitioner. This Court is therefore of the view that the matter requires to be remanded for fresh consideration on this aspect as well as with regard to the defective C Forms which according to the respondent is not acceptable and in such event, the respondent should return the defective C Forms so as to enable the petitioner to rectify the defects and re-submit the same.

6.In the light of the above, the Writ Petition is partly allowed with the following directions:

1) The claim for exemption on direct export sales which has been disallowed to the turnover of Rs.1,16,58,50,129/- is set aside and the matter is remanded to the respondent for fresh consideration who shall fixed a date for personal hearing within a period of 15 days from the date of receipt of a copy of this order, hear the petitioner, peruse the documents and re-do the assessment in that regard.
2) With regard to the defective C Forms, the respondent is directed to return the same to the petitioner granting them reasonable time to rectify the defects and re-submit the same. On such rectification to the satisfaction of the respondent, the assessment under those heads shall also be re-done.
3) So far as the sales which are not covered by C Forms, the learned counsel for the petitioner would submit that they are in the process of collecting C Forms and substantial number of C Forms have been collected and prays that the respondent may be directed to grant time to submit those C Forms. Considering the legal position that there is no time limit fixed for submitting these forms for claiming concessional rate of tax, the respondent is directed

to grant reasonable time to the petitioner to submit C Forms in respect of the inter-state sales which are not covered by C Forms.

7.With the above directions, this Writ Petition stand partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (IV)

/true copy/

Sub Asst. Registrar

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To

The Assistant Commissioner (CT) (FAC)
Ambattur Assessment Circle,
No.127, 1st Floor, Yadhaval Street, Padi,
Chennai - 600 050.

+1cc to Mr.Joseph Prabakar, Advocate Sr. 46332
+1cc to the Special Government Pleader, Sr. 46158

W.P No.2119 of 2017

AR(IV)
VR(12/07/2017)