**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 21.07.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P. No.5233 of 2021**
**and**
**W.M.P. No.5798 of 2021**

M/S Classic Granites,
represented by its Proprietor,
425-A, Ayyampalayam Pirivu,
Kavindapadi, Bhavani,
Erode. ... Petitioner

v.

The Assistant Commissioner (ST),
Chithode Assessment Circle,
Erode. ... Respondent

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the respondent in his proceedings in TNGST No.294171/2003-04 – Tamil Nadu Entry Tax on Goods, quash the assessment order dated 28.12.2020 passed therein.

For petitioner : Mr.P.V.Sudakar

For Respondent : Mr.T.N.C.Kaushik,
Additional Government Pleader

**ORDER**

The writ petition is filed challenging the impugned order dated 28.12.2020 levying entry tax on granites on the premise that the goods viz., granites which were purchased from dealers across the State were exported as such or sold to exporters. Admittedly, the sale by the petitioner of such goods were covered under Section 5(1) and 5(3) of the Central Sales Tax Act, 1956 (hereinafter referred to as "CST Act"). As a matter of fact, CST assessment has also been completed treating the entire turn over / transactions which is now sought to be subject to entry tax as export sales in terms of Section 5(1) and 5(3) of the CST Act.

2. It was submitted by the learned counsel for the petitioner that the levy of entry tax is on goods brought into a local area for consumption, use or sale therein. It is thus impermissible to levy tax on entry of goods brought into a local area for export or sale to the exporters. In this regard, reliance was placed

on the judgment of the Hon'ble Supreme Court in the case of *Tata Engineering & Locomotive Company Ltd., v. Municipal Corporation of the City of Thane & others* reported in *86 STC 363*. The following portions of the judgment is extracted hereunder:

> "*To sum up:..... In view of constitutional bar, octroi is not leviable if the goods are not brought into the octroi area for purposes of consumption or use in the area but for export and in fact exported by the importer himself or the sale by him occasions the export.*"

3. Though the above objections was raised in response to the proposed levy of entry tax, the same was not considered while passing the impugned order.

4. Heard both sides. Perused the material on record.

5. This Court finds that there is no finding in the assessment order with regard to the above objections which relates to the jurisdiction to levy tax. It is rudimentary that when objections are raised, the same ought to be dealt with by the Assessing Authority. Non-application of mind to the objection would vitiate the proceedings. The learned counsel for the Respondent would submit that they would redo the assessment.

6. In view of the submissions made by both the learned counsel for the petitioner as well as the respondent, this Court is inclined to set aside the impugned order and remit the matter back to the Assessing Authority to redo the assessment. The petitioner is permitted to file fresh objections within a period of 4 weeks from the date of receipt of a copy of this order. It is open to the petitioner to place reliance on the judgment of the Hon'ble Supreme Court in the case of *Tata Engineering & Locomotive Company Ltd.,* referred supra. It is also open to the petitioner to place reliance on the assessment completed under CST Act in respect of the above transactions wherein the transactions in issue is stated to be treated as export sales in terms of Sections 5(1) and 5(3) of the CST Act. Needless to say, the Assessing Authority shall pass a speaking order dealing with the objections raised in accordance with law and after affording a reasonable opportunity, the Assessing Authority shall complete the proceeding within a period of 6 weeks from the date of receipt of the above objections.

7. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected writ miscellaneous petition is closed.

**21.07.2023**

Index: Yes/No
Speaking / Non speaking order
Neutral Citation: Yes/No
shk

To:

The Assistant Commissioner (ST),
Chithode Assessment Circle,
Erode.

**MOHAMMED SHAFFIQ, J.**

shk

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