

THE HIGH COURT OF TRIPURA
AGARTALA

WP(C) 19 OF 2015

M/s. Otis Elevators Company (India) Limited,
Represented by its Regional Director, C.A. Nagraj,
Situated at No.2649, 37th Cross, 28th Main, 9th Block,
Jayanagar, Bangalore-560069, Karnataka.

..... **Petitioner.**

- V e r s u s -

1. State of Tripura,
Through Commissioner of Taxes & Excise,
P. No. Complex, Gurkhabasti,
Agartala, Tripura.
2. The Superintendent of Taxes,
Government of Tripura,
Charge-VII, Agartala.

..... **Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. B.N. Majumder, Advocate,
Mr. D.J. Saha, Advocate,
Mr. R. Saha, Advocate,
Mr. A. Yadav, Advocate.

For the respondents : Mr. D.C. Nath, Advocate.

Date of hearing and : 30.04.2015.
delivery of judgment
and order.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER(ORAL)

(Deepak Gupta, C.J.)

On 20-01-2015 while issuing notice to the respondents,
we had observed as follows:-

“Normally, we will not have entertained this petition where an alternative of filing appeal is available. However, the learned counsel for the petitioner has submitted before us that on 2nd December, 2014 when a hearing took place before the Assessing Officer, the petitioner company was granted 6(six) weeks time to produce all the agreements to support its contention that the contract is a works contract which is individual in nature and therefore, it is not excisable to sales tax.

In support of this allegation, the petitioner has attached a letter dated 2nd December, 2014 duly submitted in the office of the Superintendent of Taxes which shows that the petitioner asked for 6(six) weeks time to arrange for the details. The Assessing Officer will produce the records to show what order was passed on this communication and whether such order was communicated to the petitioner-M/S Otis Elevators Company (India) Ltd. or not.”

2. We have perused the impugned order and we find that on 02-12-2014 a detailed order was passed and on the same date on the margin of the order on behalf of the petitioner M/S Otis Elevators Company (India) Ltd., Mr. Tapan Banik had signed the said order. In the order sheet, it is also mentioned that Sri Tapan Banik, Advocate for the firm along with Sri Nitendra Rathi had appeared. The order does not say that 6(six) weeks time was granted to the petitioner to produce the record. Before us, in the writ petition it was mentioned that a request was made in writing

and orally the Assessing Officer had granted six weeks. The record does not support this.

3. When on the last date, we had queried the learned counsel, it was again reasserted that such an order had been passed. Thereafter, we had called for the record of the department and we found that on 12-12-2014 the department had sent a letter to Sri Tapan Banik which was received by him on 18-12-2014 informing him that the case is fixed on 19-12-2014. We can understand that Mr. Tapan Banik may not have been in a position to argue the matter on 19-12-2014 because the notice was short but the least which was required of him was to have appeared before the Assessing Officer on 19-12-2014 and informed him that for such and such reason he cannot do.

4. Today another argument has been raised before us that Mr. Tapan Banik did not hold power of attorney on behalf of the company to receive the correspondences. To say the least, this is an absolutely nonsensical argument. If Mr. Tapan Banik could represent the company before the authority, he obviously would have the authority to receive the communication on behalf of the company. It is also admitted before us that the company has changed its headquarters and, therefore, the notice which was sent to its earlier address which was the only address known to the department could not be served.

5. Therefore, we are of the considered view that this writ petition cannot be entertained and the same is dismissed with costs assessed at Rs.10,000/- (rupees ten thousand) because of the false averments made in the petition. We, however, grant liberty to the petitioner to file an appeal on or before 31-05-2015 and if such appeal is filed before the said date, the same shall be treated to be within limitation.

In case, such appeal is filed, the appellate authority shall give reasonable opportunity to the appellant-petitioner to put forth its case and the appeal shall be disposed of latest by 31-07-2015 by a reasoned order after hearing the parties or their counsel.

Needless to say, if the appeal is decided against the petitioner, it can choose its appropriate remedy in accordance with law.

6. The writ petition is disposed of in the aforesaid terms.

JUDGE

CHIEF JUSTICE