IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.A.Nos.500 to 505 of 2017
and C.M.P.Nos.7400 to 7410 of 2017

M/s.Kone Elevator India (P) Ltd.,
represented by its Company Secretary
Shri C.V.S.Krishnakumar
89-92, Dr.Radhakrishnan Salai,
Chennai - 600 004.
... Appellant/Petitioner in the above W.As

Vs.

1. The State of Tamil Nadu,
represented by its Secretary,
Commercial Taxes Department,
Fort St. George, Chennai - 600 009.

2. The Assistant Commissioner (CT),
Royapettah - II Assessment Circle,
Chennai.
.... Respondents/Respondents in the above W.As

Appeals filed under Clause 15 of the Letters Patent against the order dated 02.12.2016 made in W.P.Nos.17373 to 17378 of 2013 on the file of this Court.

Prayer in WPs 17373 to 17378 of 2013:
Petitions under Article 226 of the Constitution of India praying for the issuance of writs of certiorari to call for the records of the 2nd respondent respectively in CST/791462/2006-07 CST/791462/2007-08, CST/791462/2008-09,CST/791462/2009-10,CST/791462/2010-11, and CST 791462/2011-12 and quash the proceedings dated 30.03.2013.

For Appellant : Mr.R.L.Ramani, S.C.
for M/s.B.Raveendran

For Respondents: Mr.S.Kanmani Annamalai, AGP(T)

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by RAJIV SHAKDHER,J.)

1. Issue notice. Mr.S.Kanmani Annamalai, accepts notice on behalf of the respondents.

1.1. Mr.Annamalai, who appears for the respondents, says that he does not wish to file a reply and that he will argue based on the papers already placed on record before this Court.

2. With the consent of counsels for parties, the appeals have taken up for final hearing and disposal.

3. The captioned appeals are directed against the common order dated 02.12.2016, passed by the learned single Judge, in respect of the following Writ Petitions: W.P.Nos.17373 to 17378 of 2013 and W.P.Nos.40335 to 40337 of 2016.

3.1. To be noted, the instant Writ Appeals pertain to only Writ Petitions of 2013, i.e., W.P.Nos.17373 to 17378 of 2013.

3.2. In so far as Writ Petitions of 2016 are concerned, i.e., W.P.Nos.40335 to 40337 of 2016, they are at the stage of registration, as, admittedly, there was a delay in preferring the Writ Appeals. The applications for condonation of delay are also listed in respect of the 2016 Writ Petitions, in respect of which, we have passed a separate order.

4. Mr.R.L.Ramani, learned senior counsel, assisted by Mr.B.Raveendran, Advocate, says that there is only one grievance qua the impugned order.

4.1. The grievance, according to the learned senior counsel, is that, while the learned single Judge has made a reference to a letter dated 21.08.2002, which was addressed to another Assessee, i.e., Tvl.Johnson Lifts (P) Limited by the Special Commissioner and Commissioner of Commercial Taxes, there has been no finding returned qua the impact of the said letter.

4.2. It is further submitted by the learned senior counsel that the facts obtaining in the appellant's case are identical to that of Tvl.Johnson Lifts Private Limited. It is stated that both the appellant as well as Tvl.Johnson Lifts Private Limited, are in the business of fabrication and erection of lifts.

4.3. Furthermore, the counsel says that the said letter, which is clarificatory in nature, was issued by the Special Commissioner and Commissioner of Commercial Taxes, in response to a letter dated 21.06.2002 addressed by Tvl.Johnson Lifts Private Limited to the Commissioner of Commercial Taxes, seeking clarification with regard to the transfer of components to the site of their customer.

4.4. It is, in that, context, learned counsel says that the clarification given is important from the appellant's point of view as well.

4.5. In so far as the remaining directions and the outcome of the Writ Petitions are concerned, save and except, what is stated above, the appellant has no grievance.

4.6. As a matter of fact, we are informed that pursuant to the order passed in the Writ Petitions by the learned single Judge, Form-F declarations have been filed before the Assessing Officer.

4.7. We are further informed that the Assessing Officer is in the process of verifying the correctness of the contents of the declarations filed by the appellant.

5. Mr.Annamalai, who appears on behalf of the respondents, states that he would have no difficulty, if, this Court were to direct that the clarification issued by the Special Commissioner and Commissioner of Commercial Taxes vide letter dated 21.08.2002 be taken into account.

6. Accordingly, the impugned judgment is modified to the following extent:

(i) That the Assessing Officer will, inter alia, take into account only the contents of the letter dated 21.08.2002, to which we have made a reference above.

(i)(a) For the sake of convenience, we are replicating hereafter, what is stated in the said letter:

> "The petitioners are informed as follows:-
>
> The movement of components and parts of lifts fabricated in Tamil Nadu and despatched to other States by the petitioners as stock transfer, for installation in a building in the other state is not taxable in Tamil Nadu under the Central Sales Tax Act 1956 provided the petitioner obtains Form-'F' from the other state branch."

7. We may also note that since Form F declarations have been filed by the Assessee, pursuant to the provisions of Section 6A of the Central Sales Tax Act, 1956, the counsel has no difficulty in our observing that the Assessing Officer will take into account the said provisions as well.

8. The captioned Writ Appeals are disposed of with the aforesaid observations.

9. However, there shall be no order as to costs.

10. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary
   The State of Tamil Nadu,
   Commercial Taxes Department,
   Fort St. George, Chennai - 600 009.

2. The Assistant Commissioner (CT),
   Royapettah - II Assessment Circle,
   Chennai.

+1 CC to The Spl. Govt. Pleader(Taxes) sr 25921
+1 CC to Mr.B. Ravendran, Advocate sr 25845(08/06/2017)

W.A.Nos.500 to 505 of 2017
and C.M.P.Nos.7400 to 7410 of 2017

NMI(CO)
sp/6/6