IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.4502 & 4503 of 2009

M/s Thermax Ltd.,
453, Anna Salai, 3rd Floor
Fathima Akther Court
Teynampet
Chennai 600 018

.. Petitioner in both the writ petitions

-vs-

The Commercial Tax Officer
Alwarpet Assessment Circle
Chennai 600 028

.. Respondent in both the writ petitions

Petitions under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, to call for the records of the respondent in TNGST.0820852/2001-02 / 2002-03, and quash the proceedings dated 05.01.2009 issued therein.

For Petitioner:: Mr.R.L.Ramani
Senior Counsel for
Mr.B.Raveendran

For Respondent:: Mr.Mohammed Shaffiq
Special Government Pleader (Taxes)

ORDER

The petitioner has come to this Court questioning the impugned pre-assessment notice dated 5.1.2009 in respect of the assessment year 2001-02 / 2002-03.

2. Learned counsel for the petitioner submitted that when the petitioner had undertaken works contract for erection, testing, commissioning of water treatment plants and boilers, during the year 2001-02 / 2002-03, the petitioner had rightly exercised their option to pay the sales tax under Section 7-C of the Tamil Nadu General Sales Tax Act, 1959. But the Commercial

Tax Officer, Alwarpet Assessment Circle, differing from the submission made by the petitioner, has decided the issue against the petitioner, on the basis of the decision of the Supreme Court in State of Andhra Pradesh v. Kone Elevators (India) Ltd., (2005) 140 STC 22. However, when the issue was referred to a larger Bench, the Constitution Bench of the Apex Court in Kone Elevator India Pvt.Ltd., v. State of Tamil Nadu and others, (2014) 71 VST 1 has reversed the decision in 140 STC 22. Therefore, the impugned pre-assessment notice treating it as a proposed sale is wholly untenable and unacceptable, in view of the latest decision of the Supreme Court in 71 VST 1.

3. The learned Special Government Pleader for the respondent submitted that since the matter has been pending for the last ten years, due to the subsequent development, the march of law has to be kept in mind by the respondent while deciding the issue raised by the petitioner. Therefore, the matter may be remanded back to the file of the respondent to reconsider the issue afresh on the basis of the decision of the Supreme Court in 71 VST 1.

4. In view of the Constitution Bench decision of the Supreme Court in Kone Elevator India Pvt.Ltd., v. State of Tamil Nadu and others, (2014) 71 VST 1, reversing the decision in (2005) 140 STC 22, this Court, without going into the merits, remands the matter back to the file of the respondent to take a decision in accordance with law, within a period of four weeks from the date of receipt of a copy of this order, after hearing the petitioner in respect of the assessment year 2001-02 / 2002-03. It is also open to the petitioner to raise all the contentions before the respondent. The writ petitions are disposed of accordingly. Consequently, M.P.Nos.1 of 2009 are closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Commercial Tax Officer
   Alwarpet Assessment Circle
   Chennai 600 028

+1cc to Mr.B.Raveendran, Advocate sr.37158

W.P.Nos.4502 & 4503 of 2009

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nr 27/06/2019