IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.7778 & 7779 of 2009
and
M.P.Nos.1 & 1 of 2009

Reliance generators Pvt Ltd,
Rep by its Managing Director,
No.27, Railway Colony,
IV Street,
Aminjikarai,
Chennai - 600 029. ... Petitioner in both W.Ps.

Vs.

Assistant Commissioner,
Vadapalani II Assessment Circle,
621, Anna Salai,
Sire Mansion,
Chennai - 6. ... Respondent in both W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records on the files of the respondent in his proceedings in TNGST 1480991/2002-03 and TNGST 1480991/2001-02 dated 25.03.2009 and quash the same as unreasonable, arbitrary, based on perverse observations, without jurisdiction, invalid and illegal.

For Petitioner : Mr.T.V.Lakshman
in both W.Ps.

For Respondent : Mr.R.Swarnavel
Government Advocate in both W.Ps.

ORDER

By this common order, both the Writ Petitions are being disposed.

2. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent.

3.W.P.No.7778 of 2009 pertains to the Assessment Year 2002-03 and W.P.No.7779 of 2009 pertains to the Assessment year 2001-02.

4.The petitioner had supplied, installed, tested and commissioned of diesel generator sets to BSNL for their telephone exchanges. The petitioner had paid tax in terms of Section 7C of the TNGST Act, 1959, compounded at the rate of 4%. The assessments were also completed vide two separate Assessment Orders dated 26.05.2004.

5.These were sought to be revised by two separate revision notices dated 30.12.2005 and 24.01.2006 for the respective Assessment Years. The revision notices relied on the decision of the Hon'ble Supreme Court in State of A.P. Vs. Kone Elevators (India) Limited, 2005 (3) SCC 389 to reopen the assessment.

6. The petitioner filed its replies to the respective notices on 31.08.2006. The respondent proceeded to pass orders and confirmed the demand holding that the petitioner had indeed effected sale of parts and had not rendered work contracts.

7. Meanwhile, for the Assessment Year 2003-04, the issue was taken by the Hon'ble Supreme Court. It was heard along with the batch of cases arising out of case relating to lifts arising out of the decision of the Hon'ble Supreme Court in State of A.P. Vs. Kone Elevators (India) Limited, 2005 (3) SCC 389.

8. The Constitution Bench of the Hon'ble Supreme Court has reversed its earlier view taken in Kone Elevators (India) Limited's case referred supra vide decision in Kone Elevator India Private Limited Vs. State of Tamil Nadu, 2014 (7) SCC 1. The operative portion of the said order reads as under:-

> 70. Coming back to Kone Elevators [State of A.P. v. Kone Elevators (India) Ltd., (2005) 3 SCC 389] , it is perceivable that the three-Judge Bench has referred to the statutory provisions of the 1957 Act and thereafter referred to the decision in Hindustan Shipyard Ltd. [Hindustan Shipyard Ltd. v. State of A.P., (2000) 6 SCC

579] , and has further taken note of the customers' obligation to do the civil construction and the time schedule for delivery and thereafter proceeded to state about the major component facet and how the skill and labour employed for converting the main components into the end product was only incidental and arrived at the conclusion that it was a contract for sale. The principal logic applied i.e. the incidental facet of labour and service, according to us, is not correct. It may be noted here that in all the cases that have been brought before us, there is a composite contract for the purchase and installation of the lift. The price quoted is a composite one for both. As has been held by the High Court of Bombay in Otis Elevator [Otis Elevator Co. (India) Ltd. v. State of Maharashtra, (1969) 24 STC 525 (Bom)] , various technical aspects go into the installation of the lift. There has to be a safety device. In certain States, it is controlled by the legislative enactment and the rules. In certain States, it is not, but the fact remains that a lift is installed on certain norms and parameters keeping in view numerous factors. The installation requires considerable skill and experience. The labour and service element is obvious. What has been taken note of in Kone Elevators [State of A.P. v. Kone Elevators (India) Ltd., (2005) 3 SCC 389] is that the company had brochures for various types of lifts and one is required to place order, regard being had to the building, and also make certain preparatory work. But it is not in dispute that the preparatory work has to be done taking into consideration as to how the lift is going to be attached to the building. The nature of the contracts clearly exposits that they are contracts for supply and installation of the lift where labour and service element is involved. Individually manufactured goods such as lift car, motors, ropes, rails, etc. are the components of the lift which are eventually installed at the site for the lift to operate in the building. In constitutional terms, it is transfer either in goods or some other form. In fact, after the goods are assembled and installed with skill and labour at the site, it becomes a permanent fixture of the building. Involvement of the skill has been elaborately dealt with by the High Court of Bombay in Otis Elevator [Otis Elevator Co. (India) Ltd. v. State of Maharashtra, (1969) 24 STC 525 (Bom)] and the factual position is undisputable and irrespective of whether installation is regulated by statutory law or not, the result would be the same. We may hasten to add that this position is stated in respect of a composite contract which requires the contractor to install a lift in a building. It is necessary to state here that if there are two contracts, namely, purchase of the components of the lift from a dealer, it would be a contract for sale and similarly, if a separate contract is entered into for installation, that would be a contract for labour and service. But, a pregnant one, once there is a composite contract for supply and installation, it has to be treated as a works contract, for it is not a sale of goods/chattel simpliciter. It is not chattel sold as chattel or, for that matter, a chattel being attached to another chattel. Therefore, it would not be appropriate to term it as a contract for sale on the bedrock that the components are brought to the site i.e. building, and prepared for delivery. The conclusion, as has been reached in Kone Elevators [State of A.P. v. Kone Elevators (India) Ltd., (2005) 3 SCC 389] , is based on the bedrock of incidental service for delivery. It would not be legally correct to make such a distinction in respect of lift, for the contract itself profoundly speaks of obligation to supply goods and materials as well as installation of the lift which obviously conveys performance of labour and service. Hence, the fundamental characteristics of works contract are satisfied. Thus analysed, we conclude and hold that the decision rendered in Kone Elevators [State of A.P. v. Kone Elevators (India) Ltd., (2005) 3 SCC 389] does not correctly lay down the law and it is, accordingly, overruled.

71. Ordinarily, after so stating, we would have directed the matter to be listed before the appropriate Division Bench. However, it is not necessary to do so in this batch of cases inasmuch as the writ petitions have been filed either against the show-cause notices where cases have been reopened or against the orders

> of assessment framed by the assessing officers and civil appeals filed against certain assessment orders or affirmation thereof which are based on the decision of the three-Judge Bench in Kone Elevators case [State of A.P. v. Kone Elevators (India) Ltd., (2005) 3 SCC 389] . Considering the factual matrix, we direct that the show-cause notices, which have been issued by taking recourse to reopening of assessment, shall stand quashed. The assessment orders which have been framed and are under assail before this Court are set aside. It is necessary to state here that where the assessments have been framed and have attained finality and are not pending in appeal, they shall be treated to have been closed, and where the assessments are challenged in appeal or revision, the same shall be decided in accordance with the decision rendered by us.
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> 72. The writ petitions and the civil appeals are disposed of with no order as to costs.

9. The Hon'ble Supreme Court had specifically dealt the issue relating to the work contracts arising out of work contracts carried out by company installing lifts. However, while passing the above order, the petitioner and similarly placed persons cases were de-tagged. Thus, the decision of the Hon'ble Supreme Court is awaited on the subject.

10. Since the ratio of Constitution Bench of the Hon'ble Supreme Court in Kone Elevator India Private Limited Vs. State of Tamil Nadu, 2014 (7) SCC 1 prima facie appears to be applicable to the facts of the present case and since the earlier decision rendered in State of A.P. Vs. Kone Elevators (India) Limited, 2005 (3) SCC 389 based on which the impugned orders were passed overrulled, I am of the view that this is a fit case to remit the cases back to the respondent. The respondent may however await for the decision of the Hon'ble Supreme Court in the case of Diesel Generators sets, if indeed the petitioner's appeal is pending.

11. In the light of the above discussion and the decision of the Hon'ble Supreme Court in Kone Elevator India Private Limited Vs. State of Tamil Nadu, 2014 (7) SCC 1, the impugned orders are liable to be quashed and are hereby quashed and the cases are remitted back to the respondent to pass fresh orders. The respondent is directed to await for final disposal/order of the Hon'ble Supreme Court in the case of Diesel Generators Sets and in the petitioner's own case for the Assessment Year 2003-04.

12. Accordingly, the present Writ Petitions are disposed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jas / jen

To

Assistant Commissioner,
Vadapalani II Assessment Circle,
621, Anna Salai,
Sire Mansion,
Chennai - 6.

+1 cc to Mr.T.V.Lakshmanan, Advocate, S.R.No.8378

+1 cc to Spl Government Pleader, S.R.No.9607

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RK(CO)
RN(20/05/2020)