

(2013) 02 MAD CK 0017

In the Madras High Court

Case No : Writ Petition No. 7228 of 2004 and W.P.M.P. No. 8545 of 2004

Kone Elevator India Pvt. Ltd.

APPELLANT

Vs

Commercial Tax Officer and Others

RESPONDENT

Date of Decision : 08-02-2013

Acts Referred:

Central Sales Tax Act, 1956 — Section 6A, 9(2)

Constitution of India, 1950 — Article 226

Tamil Nadu General Sales Tax Act, 1959 — Section 13(2)

Citation : (2013) 60 VST 336

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : R.L. Ramani, for Chandran Karuppiah, for the Appellant; A.R. Jaya Prathap, Government Advocate and P. Mahadevan, Central Government Standing Counsel, for the Respondent

Judgement

V. Dhanapalan, J.—The petitioner-company has come before this court seeking for issuance of a writ of mandamus to forbear the first

respondent from taking up the issue relating to branch transfer u/s 6A of the Central Sales Tax Act (hereinafter referred to as, "the CST Act") for

the purpose of provisional assessment u/s 13(2) of the Tamil Nadu General Sales Tax Act, 1959 (for short, "the TNGST Act") read with section

9(2) of the CST Act relating to the assessment year 2003-04 in view of the amendment made to the said section by clause 144 of the Finance Act,

2002. The case of the petitioner-company from the pleadings reveals that they are dealer in lifts and lift components and is a limited company and

an assessee on the file of the first respondent. They have got 27 branches located all over India. The product of the petitioner, namely, lift cannot

be manufactured as finished goods straightaway and erect it at the customer's

site. The parts and accessories of the lift are manufactured at the factory of the petitioner in Chennai and thereafter, they are moved to the branches of the petitioner-company located outside the State of Tamil Nadu. The branches take physical delivery of the same and execute the work of erecting the lift at the site of the customer. In respect of deemed sales taking place, the branches of the petitioner located in places outside the State of Tamil Nadu, pay the applicable taxes under the works contract before the other State Governments and all the branches of the petitioner-company in India are registered dealers before their respective State Governments.

2. While so, petitioner alleges that the Revenue took the stand that the parts and accessories are moved directly to the customers' places and thereafter, the lifts are erected at the site of the customers and hence it is a case of inter-State sale. It is the petitioner's contention that after the amendment made to section 6A of the CST Act with effect from May 11, 2002, to claim the benefit of exemption on stock transfer, the assessee should furnish form F declaration, otherwise, under the deeming clause in sub-section (1) of section 6A, the goods are deemed to have been moved as a result of sale. Further, under rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, an assessee can file the statutory declaration form, namely, form F up to the time of the final assessment and even if there is any delay, it is very well open for the assessing authority to condone the delay and accept the declaration. In the above circumstances, the first respondent proposed to disallow the claim without giving any opportunity to the petitioner, and therefore, the petitioner has filed this writ petition for the above relief.

3. The first respondent has filed a counter-affidavit, inter alia, stating that the petitioner-company is a registered dealer in the books of the first respondent and they filed monthly returns in form 1 for the months from April 2003 to December 2003, claiming exemption on the sales made to the other States as branch transfer. The verification of the statement containing the bill-wise details annexed to the return revealed that the petitioner transferred lift components for execution of the works contract directly to the customers' site in the other States against work order and also furnished job numbers and claimed exemption as branch transfer. As per the

Finance Act, 2002 enacted by the Parliament with effect from May

13, 2002, the works contract transactions are treated as inter-State sales under the CST Act and the movement of goods to the other States for

use in execution of the works contract, is taxable under the CST Act at the appropriate rate, and thus, the claim of exemption on the turnover of

transfer of lift components for execution of the works contract, is not in order and therefore, the assessing authority issued notice to disallow the

claim of exemption and to assess the turnover at the appropriate rate applicable locally, provisionally under the CST Act. Instead of filing objection

to the notice issued to them, the petitioner-company has moved this court under article 226 of the Constitution of India by filing this writ petition.

4. On the above background of pleadings, Mr. R.L. Ramani, learned senior counsel appearing for the petitioner-company, submitted that the

movement of the parts and accessories of the lifts from manufacturing place to the branches in the other States, could not be construed as inter-

State sale and it is only a stock transfer. In this regard, learned senior counsel pointed out that as per the clarification issued by the Special

Commissioner and Commissioner of Commercial Taxes, Chennai, in Lr. No. Acts Cell-IV/44305/2002, dated August 21, 2002 to one of the lift

companies, the movement of components and parts of lifts fabricated in Tamil Nadu and despatched to the other States by the company as stock

transfer for installation in a building in the other State, is not taxable in Tamil Nadu under the CST Act, provided they obtain form F from the other

State branch, and based on this clarification letter, the petitioner-company claimed exemption.

5. On the other hand, Mr. A.R. Jaya Prathap, learned Government Advocate appearing for the respondents 1 and 3 and Mr. P. Mahadevan,

learned Central Government Standing Counsel appearing for the second respondent, submitted that the manufacturer has transported the lifts from

the place of manufacture to the other branches in India based on the works contract and furnished job numbers and the exemption so claimed as

branch transfer, cannot be considered under the Finance Act, 2002, because, as per the CST Act, any transfer from the manufacturing place to the

branches in the other States, would be treated as inter-State sale and therefore, the petitioner-company is liable to pay tax.

6. Heard the learned counsel appearing for the parties and perused the material documents available on record.

7. It is not in dispute that the petitioner-company is a dealer engaged in the manufacture of lifts and lift components and an assessee on the file of

the first respondent. They have got 27 branches located all over India for the purpose of erection of lifts to the customers' places. After

manufacture of the components of lifts, they used to transport the same to the branches in the other States and therefore, the petitioner claims that it

is only stock transfer from the manufacturing place to the branches and it cannot be termed as inter-State sale.

8. In this regard, it is relevant to note that as per section 6A of the CST Act, which came into effect from May 11, 2002, if a dealer wants to claim

the benefit of exemption of stock transfer, he should furnish form F declaration, otherwise, under the deeming clause in sub-section (1) of section

6A, the goods are deemed to have been moved as a result of sale. Further, rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules

provides that the assessee can file the statutory declaration under form F up to the time of final assessment and even if there is any delay, it is very

well open for the assessing authority to condone the delay and accept the declaration.

9. In the above context, it is worthwhile to notice that in furtherance of the CST Act, a clarification letter was issued by the Special Commissioner

and Commissioner of Commercial Taxes, Chennai, in Lr. No. Acts Cell-IV/44305/2002, dated August 21, 2002 to one of the lift companies,

stating that the movement of components and parts of lifts fabricated in Tamil Nadu and despatched to the other States by the company as stock

transfer for installation in a building in the other State, is not taxable in Tamil Nadu under the CST Act, provided they obtain form F from the other

State branch.

10. It is claimed by the petitioner-company that they have complied with the requirements as per law by producing necessary documents and

details, and therefore, the respondents are bound to consider the same and in such event, the assessing authority may disallow the claim of

exemption and assess the turnover at the appropriate rate applicable locally, provisionally under the CST Act, and it is incumbent on the part of the

respondents to consider the claim of the petitioner-assessee and proceed further to pass appropriate orders.

11. Law is well-settled that when there is a provisional assessment, the person aggrieved by the provisional assessment has every right to make objections and if such objections are made, it is incumbent on the part of the authority concerned to look into the same, after giving an opportunity of hearing to the person and pass appropriate orders, on the merits and in accordance with law, based on material facts and the objections made thereon.

12. Such a course is not adopted in this case and the learned senior counsel appearing for the petitioner submitted that in view of the said clarification letter, dated August 21, 2002, the petitioner-company is claiming that they are manufacturing goods and carry on only stock transfer from one branch to the other branch of another State, which cannot be termed as inter-State sale and the tax could not be levied and they claim exemption, and therefore, the petitioner is prepared to make their objections before the competent authority in respect of the notice issued to the petitioner-company by the respondents for disallowing the claim of exemption, and if such objections are filed, the competent authority may take decision by following due process of law, after giving an opportunity of hearing to the petitioner. In the light of the above submissions made by the learned counsel appearing for the parties, this writ petition is disposed of, with a direction to the petitioner-company to make their objections before the first respondent-competent authority, in respect of the notice issued to them for disallowing the claim of exemption, taking note of every factor involved in the case and the relevant provisions of law, within a period of two weeks from the date of receipt of a copy of this order, and thereafter, the first respondent is directed to consider the said objections, after giving an opportunity of hearing to the petitioner and pass appropriate orders on merits and in accordance with law, expeditiously. No costs. W.P.M.P. is closed.