
(2011) 12 KAR CK 0357

In the Karnataka High Court

Case No : R.P. No. 99 of 2011 in STRP No. 42 of 2006

L and T Komatsu Ltd.

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Citation : (2011) 12 KAR CK 0357

Hon'ble Judges : N. Kumar, J;B.V. Nagarathna, J

Bench : Division Bench

**Advocate : T. Suryanarayana, for M/s. King and Partridge, for the Appellant;
Sharadamba, HCGP, for the Respondent**

Final Decision : Allowed

Judgement

N. Kumar. J.

1. This review petition is filed seeking review of the order dated 24/12/2010 in STRP.No. 92/2006.

2. The review petition is dismissed holding that the transaction in question involves inter-state sale and therefore, no ground is made out for interfering with the order passed by the Karnataka Appellate Tribunal. In the affidavit filed in support of the application for review, the deponent has sworn to the fact that when the matter was heard on 23/4/2009, this Court observed that they are inclined to remand the matter but they made it clear that if for any reason they are not remanding the matter, they will post the matter again before the Court, so that it may be disposed of on merits. However, the Court has proceeded to dismiss the appeal on merits. In those circumstances, it was submitted that the impugned order requires to be recalled. It was also pointed out by relying on several judgments that admittedly, the consignee is situated within the State. After the assessee supplied his goods to the consignee, the consignee in turn has raised invoice and sent the goods outside the State. Therefore, it is contended that the contract between the consigner and the consignee did not occasion the

movement of the goods outside the State. It is the contract between the purchaser and the consignee but there was no occasion for movement of the goods outside the State. Therefore, they say that there is an error apparent on the face of the record.

3. After hearing the learned counsel for the parties, we are satisfied that an impression was given to the parties that in the event of the case to be disposed of on merits, the case be posted for hearing but it has not been done. Even otherwise, there appears to be an error apparent on the face of the record, which calls for recalling of the order and a fresh hearing.

4. For the aforesaid reasons, we pass the following:

ORDER

The review petition is allowed. The order passed by this Court on 24/12/2010 in STRP.42/2006 is recalled. The review petition is restored to its original file.

Office is directed to list the STRP before the Bench according to roster.