

(2013) 06 KAR CK 0100

In the Karnataka High Court

Case No : STRP No's. 2 of 2012 and 23-33 of 2013

M/s. Schindler India (P) Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 03-06-2013

Acts Referred:

Constitution of India, 1950 — Article 141

Karnataka Value Added Tax Act, 2003 — Section 38(1), 39(1), 65

Citation : (2013) 76 KarLJ 369 : (2014) 67 VST 152

Hon'ble Judges : D.V. Shylendra Kumar, J;B.S. Indrakala, J

Bench : Division Bench

Advocate : Chythanya K.K, for the Appellant; S. Sujatha, AGA, for the Respondent

Judgement

1. These sales tax revision petitions u/s 65 of the Karnataka Value Added Tax Act, 2003 [for short "the Act"] are by a dealer who is carrying on the activity of manufacture, sale and installation of lifts/elevators. The period involved is the year 2005-06 i.e., for the monthly periods from April 2005 to March 2006. The petitioner - dealer is aggrieved by the order dated 3.11.2010 passed by the Karnataka Appellate Tribunal in STA Nos. 649-660/2009 dismissing the appeals of the revision petitioner and affirming the orders passed by the assessing authority and first appellate authority.

2. The deemed assessments u/s 38[1] of the Act had been reopened by issue of notice u/s 39[1] of the Act as the return was not accepted and therefore the reopening by the assessing authority.

3. The revision petitioner - dealer had claimed that its turnover relating to the activity of manufacture, supply and installation of lifts were to the specification of the customer; that they got it manufactured at the factory premises at Mumbai and transported in semi knocked down condition, assembled at the site of the customer and installed the same by further operations carried out for such installations and therefore the dealer had claimed that it was only a works

contract and not sale etc.

4. The assessing officer being of the view that it is a sale and not works contract, had reopened the assessment for the periods in question.

5. The assessing officer did not accept the stand of the assessee that it was only works contract and not a case of sale as it was found that the end product was actually delivered to the assessee though at its work place and components were assembled and installed at the customer's place and therefore the activity was only one of sale of elevators and not one of works contract.

6. It so happened that predecessor of the assessing officer had issued notice and it had been indicated that the claim of the assessee that it is works contract cannot be accepted, but it is only a sale and successor officer had concluded the assessment on such premise. On reassessment, the tax liability was determined based on the premise that it was a sale transaction and not a works contract.

7. The assessee appealed for each of the month to the Appellate Commissioner, but not with much success. The assessee also contended that the levy of penalty is not justified. The appellate authority also found that the assessee is manufacturer of lifts/elevators with its manufacturing activity and head office at Mumbai and branches all over the country; that the branch office at Bangalore had received lifts/elevators in a semi knocked down condition and was installed at the place where the customer was having his establishment.

8. The appellate authority, on a perusal of the records and the facts of the case, noticed that the claim of the assessee that it was a works contract was not tenable as the appellant-assessee had only supplied, installed and commissioned the lifts/elevators as per the requirement of the customers. The required fittings and other civil works had not been executed by the appellant. Instead, the building owner himself had carried out those works. It also noticed that the only requirement on the part of the assessee was to supply, install and commission the elevators and as per the orders passed by the customers and other incidental civil works were not carried out by the assessee, but by the owners.

9. In this view of the matter, the appellate authority opined that the question is squarely covered by the decision of the Supreme Court in the case of State of Andhra Pradesh Vs. Kone Elevators (India) Ltd.,

10. The assessee being aggrieved by this order, further appealed to the Appellate Tribunal. The appellate tribunal though did examine the matter at some length, found no occasion for interference, particularly, as the appellant or his counsel did not appear before the Tribunal to advance further arguments. The Tribunal in the absence of the appellant or its counsel, proceeded to examine the case on merits and on the grounds urged and found that the lifts were not by construction installed at the place, but existing civil works was fitted with lifts at the place specified by the customer and noticed that the orders are received at the branch office, communicated to the head office, lifts/elevators were

manufactured to the specification brought to the place in a semi knocked down condition and installed. The Tribunal opined that it is not the case of works contract, but sale of lifts/elevators. It also ignored the minimum labour charges that may be involved during the installation stage as it was negligible amount compared to the value of the product and in terms of the Judgment of the Supreme Court in Kone Elevators" case [supra], it cannot have a bearing on the nature of the transaction being a "sale" transaction.

11. It is aggrieved by this order of the Tribunal, the present revision petition.

12. Appearing on behalf of the petitioner, Sri. Chythanya, learned counsel vehemently urged that the assessing authority, appellate authority and the Tribunal have all committed an error in treating the entire sales turnover of the assessee as sale consideration; that no distinction has been maintained in the labour component of the value involved and the actual value of the lifts/elevators. What is urged specifically is that the turnover included even value of annual maintenance charges; that the value of the annual maintenance charges which is contract subsequent to the installation is also included in the turnover and brought to tax which cannot be accepted; that the Judgment of the Supreme Court in Kone Elevators" case [supra] has been doubted by the very Supreme Court in the later order of the Supreme Court and as of now been referred to larger Bench and therefore that cannot be the law etc.

13. On the other hand, Smt. S. Sujatha, learned Additional Government Advocate appearing on behalf of the State, on issue of notice, submits that the matter is squarely covered by the decision of the Supreme Court; that manufacture, supply and installation of lifts/elevators has been categorically held to be in the nature of sale by the Supreme Court and not transaction in the nature of works contract and therefore the revision petitions are to be disposed of as being covered by the decision of the Supreme Court.

14. With regard to reference to the larger Bench, learned Additional Government Advocate would submit that this court has in similar situation held that a reference to the larger Bench cannot make any difference as law as declared by the Supreme Court which is the law under Article 141 of the Constitution of India is the law as it exists and doubting of the earlier decision and referring it to the larger Bench even by the Supreme Court will not change the law till it is so changed by a subsequent decision and there is no subsequent decision after the Judgment of the Supreme Court in Kone Elevators" case [supra].

15. With regard to the contention that annual maintenance charges have also been included which are purely labour contracts and therefore to that extent the Tribunal itself should have applied its mind in the wake of the grounds raised and given deduction for the same from the turnover, it is submitted that ground was never raised in that form before any of the authorities except for contending that it is only a works contract and the labour component should have been deducted.

16. Though Mr. Chythanya, learned counsel for petitioner would urge that in the

ground raised before the first appellate authority, the assessee had claimed that including the value of pure labour contract is not proper etc., we find that these grounds were urged only in the background of the claim that it was works contract and not otherwise.

17. We also do not find from the record which is brought to our notice by reading the order of the assessing authority and the first appellate authority that no claim had been put forth claiming deductions towards annual maintenance charges as it is under a separate contract.

18. Though ground is raised before the first appellate authority that turnover included pure labour contract it is not made specific nor a claim for deduction of annual maintenance charges is made by the assessee, but only a ground. In the absence of any specific issue made in respect of annual maintenance charges and proper foundation having been laid by the assessee to claim the same, we cannot merely because the assessee had contended that the turnover included value of labour which was purely in the context of the earlier stand that it was only a works contract and not a sale and therefore we cannot permit the assessee to come up with such grounds in these revision petitions on the premise that the authorities have committed an error on this aspect.

19. However, Sri. Chythanya, learned counsel for petitioner submits that in matters where this court has followed the earlier view taken by the Supreme Court and even when the view is doubted by the Supreme Court referred to the larger Bench, liberty is being reserved to the assessee to seek for suitable corrections and the assessing authority to take note of the subsequent decision if the earlier view has been reversed and to act accordingly and therefore the assessee should be reserved such liberty.

20. Smt. S. Sujatha, learned Additional Government Advocate submits that the assessee can bring it to the notice of the assessing authority any such views and seek for suitable modification.

21. Insofar as levy of penalty is concerned, we notice that it is following the reopening and reassessment and therefore we do not find any justification to interfere on the levy of penalty either.

22. The main question of law sought to be raised in these revision petitions being the question as to the transaction is a sale or a work contract and in almost identical circumstances, Supreme Court having held that it is a sale in Kone Elevators" case [supra], this question is now covered by the Judgment of the Supreme Court and therefore revision petitions are only to be dismissed.

23. While liberty is reserved to the appellant to seek for suitable modification in the event of the Supreme Court taking a different view from what it has taken in Kone Elevators" case [supra], these revision petitions are dismissed. It is needless to observe that modification if any brings down the tax liability, the assessing authority has to proportionately bring down the penalty and interest.