(2004) 11 KAR CK 0019

In the Karnataka High Court

Case No : Sales Tax Revision Petition No''s. 5, 19 to 24 of 2002

State of Karnataka and Others APPELLANT

Vs

ECE Industries Limited RESPONDENT

Date of Decision : 10-11-2004

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12 (3), 12 A, 12 A (1A), 17 (6), 2 (t)

Citation : (2006) 144 STC 605

Hon'ble Judges : H.L. Dattu, J;A.C. Kabbin, J

Bench : Division Bench

Advocate : B. Anand, for the Appellant; K.P. Kumar, Senior Advocate for K. Krishna, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Dattu, J.—These revision petitions are filed against the common order passed by the Karnataka Appellate Tribunal in the appeals filed by the assessee and the cross-appeal filed by the Revenue for the assessment years 1990-91 and 1991-92 u/s 12A of the Karnataka Sales Tax Act ("the KST Act", for short) and for the assessment years 1994-95, 1995-96 and 1996-97 u/s 12(3) of the Act and also the levy of penalty for the years 1990-91 and 1991-92 u/s 12-A(1-A) of the Act.

2. Briefly stated for the purposes of these revision petitions, the facts are :

The respondent is a public limited company. It is engaged in the business of manufacture, supply and installation of lifts and elevators. The respondent-company has branches all over the country. It has its manufacturing unit for lifts and elevators at Ghaziabad, U.P. The respondent-company at Bangalore undertakes designing, manufacture, erection and commissioning of lifts and elevators according to the requirements of individual customer. The registered office at Bangalore procures orders from customers in Karnataka towards supply, erection and commissioning of lifts and elevators, but the manufacturing of these lifts and elevators are undertaken at its factory in Ghaziabad, U.P. The designing and construction of lifts is as per the requirement of each specific customer. Lifts and elevators so manufactured are later stock transferred in parts and received by the regional office at the customers'' premises. The final erection and commissioning of lifts and elevators takes place in the premises of the customers in the State of Karnataka.

3. The assessing authority for the assessment years namely, 1990-91 and 1991-92 had completed the assessments originally u/s 17(6) of the Act by accepting the returns filed by the respondent-company by its order dated July 11, 1992. After receipt of the report from the Intelligence Wing of the Department, wherein it was reported that there existed a large quantity of turnover which was exigible to tax, but which had not been declared in the turnover of the assessee, the assessing authority has re-opened the completed assessments for the assessment years 1990-91 and 1991-92 and has passed reassessment orders u/s 12A of the Act and also has levied penalty u/s 12-A(1-A) of the Act.

The assessing authority for the assessment years 1994-95, 1995-96 and 1996-97, after rejecting the returns filed by the assessee has completed the best judgment assessments u/s 12(3) of the Act read with rule 18(1) of the Rules.

4. The assessee aggrieved by the orders of reassessment and levy of penalty for the assessment years 1990-91 and 1991-92 and the assessment orders passed u/s 12(3) of the Act for the assessment years 1994-95, 1995-96 and 1996-97, had filed five separate appeals before the Joint Commissioner of Commercial Taxes (Appeals), Bangalore, in No. KST.AP.94/99-2000, KST.AP.20, 21, 22 & 23/2000-2001. The appellate authority by its common order dated December 26, 2000 has rejected all the appeals and has confirmed the order passed by the assessing authority for the assessment years in question.

5. The respondent-company thereafter had filed appeal in S.T.A. No. 971 of 1998 before the Karnataka Appellate Tribunal ("the Tribunal", for short) against the appeal orders passed by the first appellate authority for the assessment year 1992-93, wherein the appellate authority had confirmed the order passed by the assessing authority by his order dated October 7, 1997 u/s 12(3) of the Act and the levy of penalty u/s 12(4) of the Act. The assesses-company has also filed appeals before the Tribunal against the common order passed by the first appellate authority for the assessment years 1990-91, 1991-92, 1994-95, 1995-96 and 1996-97 in S.T.A. Nos. 13, 14, 15, 16 and 17 of 2001. The State also had filed cross-appeal before the Tribunal, being aggrieved by the common order passed by the first appellate authority dated December 26, 2000 and the same was registered as cross-appeal S.T.A. No. 945 of 2000. The Tribunal by its common order dated May 31, 2001 has allowed all the appeals filed by the respondent-company and has rejected the cross-appeal filed by the Revenue. Aggrieved by these orders, the Revenue is before this Court in these revision petitions filed u/s 23(1) of the Act.

6. The questions of law raised in these revision petitions for our consideration and decision are :

I. Whether the judgment of the Tribunal is in consonance with the facts and circumstances and the law applicable ?

II. Whether the Tribunal could hold that the movement of goods was occasioned as an incident of sale even though the contract was silent on this aspect ?

III. Whether the Tribunal was right in holding that the movement of goods were on account of inter-State sale when in fact the property/goods passes only after erection and commissioning of the lifts and elevators and the sale transaction is completed only after such erection and commissioning ?

7. Sri Anand, learned Government Advocate, contended that the contract was entered into by the customer with the branch office of the respondent-company for supply, erection and commissioning of the lifts and elevators. He argued that being the case, that it is the lift and elevators in working condition which are installed and transferred to the purchaser and not merely the inputs or goods involved in the erection and commissioning of the lifts or the elevators and that therefore, the conditions essential for sale to be held in the course of inter-State trade or commerce as envisaged u/s 3 of the Central Sales Tax Act, 1956 ("the CST Act", for short) are not satisfied. Alternatively, it is contended that the contract of sale itself should provide for inter-State movement of goods and such movement should be incident of sale, but that in the present case, the contract did not provide either expressly or by implication the movement of goods from one State to another and that therefore, nor did it stipulate that the goods would be moved from one State to another, the works contract executed by the respondent in the State of Karnataka cannot be said as the movement of goods is in the course of inter-State trade or commerce and consequently, the Tribunal was not justified in coming to the conclusion that the transaction in question is not exigible to levy of tax u/s 5-B of the KST Act. The learned Government Advocate further contended that the movement of goods involved in the present transaction was not stipulated under the contract and it was on account of the manner in which the respondent-company has arranged its business and the goods have moved from its manufacturing unit to the branch office and the same is immaterial for the purpose of levy of tax under the Act and the relevant factor that requires to be considered is, where the property in goods passes to the purchaser. He contends that in the present case, the property in the goods would become the property of the purchaser only after the lifts and elevators are installed and commissioned. In support of his contention, the learned Government Advocate would rely on the observations made by the Bombay High Court in the case of Otis Elevator Company (India) Ltd. Vs. The State of Maharashtra, , and by the Supreme Court in the case of Sentinel Rolling Shutters and Engineering Company (Pvt.) Ltd. Vs. The Commissioner of Sales Tax, and in the case of Ram Singh and Sons Engineering Works Vs. Commissioner of Sales Tax, U.P., ,

8. In Otis Elevator Company (India) Ltd. Vs. The State of Maharashtra, , the Bombay High Court was primarily concerned with the distinction between the contract for sale and contract for work and labour and while considering the aforesaid issue, the court was pleased to observe "that where the service rendered and the work undertaken in execution of the contract is of a complicated and highly technical nature requiring considerable experience, and in execution of such contract any apparatus or article manufactured by the works contractor is used, we find it difficult to hold that the mere use of the material, or the ultimate passing of the property in the article or apparatus as a result of the execution of the contract, will make it possible to sever the agreement into two parts, one for the sale of goods, and the other for services rendered". The court was further pleased to observe "that the contract for supply, erection and fitting of a passenger lift in a building for an all inclusive charge is a contract for work and not one of sale".

9. Sentinel Rolling Shutters and Engineering Company (Pvt.) Ltd. Vs. The Commissioner of Sales Tax, , the Supreme Court was primarily concerned with the issue namely, when does the contract is said to be complete in a case of fabrication and fixing of rolling shutters to a premises. While answering the said issue, the court was pleased to observe that the contract for fabrication, supply, erection and installation of particular types of rolling shutters may be one inclusive of erection and installation charges. It may not recognise any dichotomy between fabrication and supply of the rolling shutters and their erection and installation, so far as the price is concerned. The erection and installation, in such contract, is an essential part of the contract, as the fabrication and supply. It is only on the erection and installation of the rolling shutters that the contract would be fully executed.

10. The apex Court in Ram Singh and Sons Engineering Works Vs. Commissioner of Sales Tax, U.P., , was considering a contract for fabrication and erection of travelling crane. The issue before the court was, whether the contract was one for work and labour or a contract of sale of travelling cranes. The court after considering the terms of contract between the parties, was pleased to observe :

The fabrication and erection of a 3-motion electrical overhead travelling crane is a highly skilled and specialised job and the component parts have to be taken to the site and they are assembled and erected there and it is only when this process is complete that a 3-motion electrical overhead travelling crane comes into being. The process of assembly and erection of such a crane requires a high degree of skill and it cannot be said that its erection at the site is merely incidental to its manufacture and supply. The fabrication and erection is one single indivisible process and the crane comes into existence only when the erection is complete. The erection is thus a fundamental and integral part of the contract, because without it the crane does not come into being. The contract was one for work and labour and not one for sale.

It was held in that case that the contract was one for work and labour and not a contract for sale.

11. Per contra, Sri K.P. Kumar, learned Senior Counsel appearing for respondent-company, would contend that the assessing authority was not justified in bringing to tax the turnover of the assessee, on the assumption, that the works contract was executed in the State of Karnataka and therefore, charging provision Section 5B of the Act is attracted.

The other contention canvassed was that it is not a works contract liable to tax under the Act, in view of the fact that the same is inter-State works contract executed by ECE Industries Limited at Ghaziabad.

The learned Senior Counsel explains the nature of the contract between the contracted and the respondent-company and in that process submits, that the respondent-company procure orders in Karnataka for installation and commissioning of lifts and elevators from customers and sends it to its manufacturing unit at Ghaziabad, U.P., for manufacture and supply of lifts as per the design and drawings of the customers and after manufacture of the lifts and elevators, they are tested at Ghaziabad and thereafter, the same are dismantled and subsequently, they are transported to the work site for installation and commissioning to the specification of the customers. He submits that on the whole, the entire transaction is done at Ghaziabad and the goods are moved inter-State as a result of deemed sale in the course of execution of works contract. In sum and substance, the contention of the learned Senior Counsel is that the present contracts in the hands of the respondent-company are not liable to tax as they are inter-State works contracts, and the State has no power to levy tax on such inter-State works contract. The learned Senior Counsel in support of his submission, relies on the law laid down by the apex Court in several decisions. Reference to which will be made at an appropriate stage.

12. Section 5B of the Karnataka Sales Tax Act provides for levy of tax on transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract.

Section 2(t) of the Act defines the meaning of the expression "sale" to mean every transfer of the property in goods other than by way of a mortgage, hypothecation, charge or pledge by one person to another in the course of trade or business for cash or deferred payment or other valuable consideration and it includes a transfer of property in goods involved in the execution of a works contract. Explanation (3)(a) to Section 2(t) of the Act provides that the sale or purchase of goods, other than in the course of inter-State trade or commerce or in the course of import or export shall be deemed, for the purposes of this Act, to have taken place in the State wherever the contract of sale or purchase might have been made, if the goods are within the State, in the case of specific or ascertained goods, at the time the contract of sale or purchase is made and in the case of unascertained or future goods, at the time of their appropriation to the contract of sale or purchase by the seller or by the purchaser, whether the assent of the other party is prior or subsequent to such appropriation.

Clause (c) to explanation 3 of Section 2(t) of the Act provides that for the purpose of the Act, the transfer of property in goods involved in the execution of works contract shall be deemed to have taken place in the State, if the goods are within the State at the time of such transfer, irrespective of the place where the agreement for works contract is made, whether the assent of the other party is prior or subsequent to such transfer. (Underlining* by us)

13. The Supreme Court has explained the scope of clause (c) of Explanation (3) to Section 2(t) of the Act in the case of Builders'' Association of India v. State of Karnataka [1993] 88 STC 248 SC. In the said decision, the court has observed :

Clause (c) of explanation (3) to Section 2(t) of the Karnataka Sales Tax Act, 1957, which fixes the situs of sale in the case of a works contract, has to be read with the other provisions of the Act, including clauses (a) and (b) of explanation (3), which expressly exclude a sale in the course of inter-State trade or commerce and a sale in the course of import or export. So read it cannot be said that in fixing the situs in respect of deemed sales resulting from the transfer of property in goods involved in the execution of a works contract, the State Legislature has included a sale in the course of inter-State trade or commerce or a sale outside the State or a sale in the course of import or export.

14. The Supreme Court in Gannon Dunkerley and Co. and Others Vs. State of Rajasthan and Others, , while considering the issue whether in exercise of its legislative power to impose tax on sale or purchase of goods under entry 54 of List II of Schedule VTI to the Constitution of India read with article 366(29-A)(b), the State Legislature while imposing tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract is competent to impose a tax on such a transfer (deemed sale) which constitutes a sale in the course of inter-State trade or commerce or a sale outside the State or in the course of import or export was pleased to conclude as under :

1. In exercise of its legislative power to impose tax on sale or purchase of goods under entry 54 of the State List read with article 366(29-A)(b), the State Legislature, while imposing a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract is not competent to impose a tax on such a transfer (deemed sale) which constitutes a sale in the course of inter-State trade or commerce or a sale outside the State or a sale in the course of import or export.

2. The provisions of Sections 3, 4, 5, 14 and 15 of the Central Sales Tax Act, 1956, are applicable to a transfer of property in goods involved in the execution of a works contract covered by article 366(29-A)(b).

3. While defining the expression ''sale'' in the sales tax legislation, it is open to the State Legislature to fix the situs of a deemed sale resulting from a transfer

falling within the ambit of article 366(29-A)(b) but it is not permissible for the State Legislature to define the expression ''sale'' in a way as to bring within the ambit of the taxing power a sale in the course of inter-State trade or commerce, or a sale outside the State or a sale in the course of import and export.

15. A division Bench of the Gauhati High Court in the case of Projects and Services Centre v. State of Tripura [1991] 82 STC 89 Gau, has observed that in view of the law declared by the apex Court in Builders Association''s case [1989] 73 STC 370 Gau, the sales tax laws passed by the Legislatures of States levying taxes on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract were subject to the restrictions and conditions mentioned in each clause or sub-clause of article 286 of the Constitution ; the principles for determining when a sale takes place in the course of inter-State trade or commerce laid down in Section 3 of the Central Sales Tax Act would apply equally to transfer of property in goods involved in the execution of works contract.

The facts in the aforesaid case were that the petitioner-firm was having its business at Calcutta and it purchased materials in several States outside the State of Tripura and also had placed orders for supply of materials in Tripura for use in the execution of a works contract in Tripura. The Superintendent of Taxes, Tripura, had passed an order of assessment under the Tripura Sales Tax Act and had issued demand notice to the petitioner-firm on the ground that the actual transfer of property in the materials used in the contract took place in Tripura and the petitioner-firm was liable to pay tax under the Tripura Sales Tax Act. The order of assessment and the demand notice were questioned by the petitioner-firm before the Gauhati High Court. The court while allowing the petition and setting aside the order of assessment and the demand notice issued by the sales tax authorities was pleased to hold, "the fact that the use of the materials was made in a works contract or the property in the materials passed in the State of Tripura did not in any way affect the inter-State nature of the transaction.

16. The Parliament enacted the Central Sales Tax Act, 1956 in exercise of the authority conferred upon the Parliament by article 286 and clause (3) of article 269 of the Constitution of India. The preamble of the Act provides the object for which the Act is enacted. It is to formulate principles for determining when sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import into or export from India, to provide for the levy, collection and distribution of taxes on sales of goods in the course of inter-State trade or commerce and to declare certain goods to be of special importance in inter-State trade or commerce and specifies the restrictions and conditions to which State laws imposing taxes on the sale or purchase of such goods of special importance shall be subject to.

The scope of article 286 of the Constitution after 46th Constitutional amendment came up for consideration before the apex Court in Builders Association of India v. Union of India [1989] 73 STC 370 kar and in the said decision, the court observed, that the expression ''tax on sale or purchase of goods'' in entry 54 of State List includes, a tax on the transfer of property in goods or in some other form involved in the execution of works contract also and thus becomes subject to the same discipline to which any levy under entry 54 of the State List is made subject to the restrictions and conditions mentioned in each clause or sub-clause of article 286 of the Constitution. Secondly, the position is the same as regards article 286(1) of the Constitution, i.e., no State law shall impose or authorise the imposition of tax on sale or purchase of goods where such sale or purchase takes place outside the State or in the course of import into or export of goods out of territory of India in terms of article 286(1) of the Constitution including the transfer of goods referred to in article 366(29-A)(b) of the Constitution, which is deemed to be a sale of goods. Thirdly, restrictions mentioned in article 286(3) of the Constitution are also applicable to transfer of property referred to in article 366(29-A)(b) of the Constitution. Sub-clause (a) to article 286(3) of the Constitution deals with restrictions as regards declared goods in inter-State trade or commerce as governed by law enacted by Parliament as now contained in Sections 14 and 15 of the Central Sales Tax Act, 1956. Sub-clause (b) of article 286(3) of the Constitution is an additional provision which empowers Parliament to impose any additional restriction and condition in regard to the levy of sales tax on transaction deemed to be sale under sub-clause (b), works contract or sub-clause (c), hire purchase or sub-clause (d), right to use goods, of clause (29-A) of article 366 of the Constitution. Fourthly, all transfers, deliveries, and supplies of goods referred to in clauses (a) to (f) of clause (29-A) of article 366 of the Constitution are subject to restrictions and conditions mentioned in clause (1), clause (2) and sub-clause (a) of clause (3) of article 286 of the Constitution and deliveries that take place under sub-clauses (b), (c) and (d) of clause (29-A) of article 366 of the Constitution are subject to additional restrictions mentioned in clause (b) of article 286(3) of the Constitution. Fifthly, the sales tax laws passed by the Legislatures of the States levying tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract are subject to restrictions and conditions mentioned in each clause or sub-clause of article 286 of the Constitution.

The Supreme Court in the case of Gannon Dunkerley and Co. and Others Vs. State of Rajasthan and Others, reiterated what was said earlier in Builders Association of India and Others Vs. Union of India (UOI) and Others, . The court went on further to observe, that, the legislative power under entry 54 of the State List is not available to States in respect of transactions of sale or purchase which takes place in the course of inter-State trade or commerce and similarly clause (1) of article 286 of the Constitution prohibits the State from making a law imposing or authorising the imposition of tax on the sale or purchase of goods where such sale or purchase takes place outside the State or in the course of import of goods into or export of goods out of the territory of India.

17. Section 3 of the Central Sales Tax Act, 1956, formulates the principles to determine sales or purchases in the course of inter-State trade or commerce. A

sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase occasions the movement of goods from one State to another or is effected by a transfer of documents of title to the goods during their movement from one State to another. An analysis of the above provision would indicate that there must be movement of goods from one State to another in pursuance of the contract of sale irrespective of the event or place of effecting the transfer of property in goods, since it would be purely commercial obligation of parties to the contract. For the purpose of Section 3(a) of the Central Sales Tax Act, it is not necessary that the contract of sale must itself provide for and cause the movement of goods or that the movement of goods must be occasioned specifically in accordance with the terms of the contract of sale. It does not itself provide the movement of goods from one State to another where such movement is the result of a covenant in the contract of sale or is an incident of that contract. Therefore, the test is movement of goods from one State to another in the course of inter-State trade or commerce. The transfer of property in the State in which the works'' contract is executed or transfer of right to use goods takes place does not determine situs of an inter-State sale.

18. In Oil India Ltd. Vs. The Superintendent of Taxes and Others, , the Supreme Court has observed :

The movement of crude oil from the State of Assam to the State of Bihar was an incident of the contract of sale and therefore, the sales was in the course of inter-State trade or commerce. No matter in which State the property in the goods passes, a sale which occasions the ''movement of goods from one State to another is a sale in the course of inter-State trade''. The inter-State movement must be the result of a covenant, express or implied, in the contract of sale or an incident of the contract. It is enough if the movement was in pursuance of and incidental to the contract of sale.

19. In English Electric Co. of India Ltd. and Another Vs. The Deputy Commercial Tax Officer and Others, , the apex Court has observed :

When the movement of goods from one State to another is an incident of the contract of sale, it is a sale in the course of inter-State trade falling u/s 3(a) of the Central Sales Tax Act, 1956. It does not matter in which State the property in the goods passes. What is decisive is whether the sale is one, which occasions the movement of goods from one State to another. The inter-State movement must be the result of the covenant, express or implied, in the contract of sale or an incident of the contract. It is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. It is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It will be enough if the movement is in pursuance of and incidental to the contract of sale.

20. In Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others, , the Supreme Court has stated :

(i) that if a contract of a sale contains a stipulation for the movement of the goods from one State to another, the sale would certainly be an inter-State sale. But for the purposes of Section 3(a) of the Act it is not necessary that the contract of sale must itself provide for and cause the movement of goods or that the movement of goods must be occasioned specifically in accordance with the terms of the contract of sale. A sale can be an inter-State sale, even if the contract of sale does not itself provide for the movement of goods from one State to another but such movement is the result of a covenant in the contract of sale or is an incident of that contract :

The question as regards the nature of the sale, that is, whether it is an inter-State sale or an intra-State sale, does not depend upon the circumstance as to in which State the property in the goods passes. It may pass in either State and yet the sale can be an inter-State sale.

21. Sahney Steel and Press Works Limited and Another Vs. Commercial Tax Officer and Others, , the apex Court has stated :

(i) that even if the customer placed an order with the branch office and the branch office communicated the terms and specifications of the order to registered office and the branch office itself was concerned with despatching, billing and receiving of the sale price, the order placed by the customer was an order placed with the company, and for the purpose of fulfilling that order the manufactured goods commenced their journey from the registered office in the State of Andhra Pradesh to the branch outside the State for delivery of the goods to the customer. Both the registered office and the branch office were offices of the same company : they did not possess separate juridical personalities. The movement of the goods from the registered office at Hyderabad was occasioned by the order placed by the customer and was an incident of the contract, and therefore, from the very beginning from Hyderabad all the way until delivery to the customer it was an inter-State movement. The sale transactions were inter-State sales u/s 3(a) of the Act.

22. In Re. 20th Century Finance Corpn. Ltd. v. State of Maharashtra [2000] 119 STC 182 bom, the court has stated :

40. A perusal of Explanation 3(d) to Section 2(t) shows that the transfer of right to use any goods would be deemed to have taken place in the State of Karnataka if the goods are for use within the State irrespective of the place where the contract of transfer of right to use the goods is executed. The said Explanation 3(d) to Section 2(t) widens the ambit of definition of ''sale'' by including sales outside the State of Karnataka and the sales which occasioned import of goods into India, merely on the premise that goods put to use are located within the State of Karnataka irrespective of the place where the contract or transfer has taken place. This explanation is in excess of legislative power under entry 54 of

List II of the Seventh Schedule. Another important aspect to notice is that the provision of Section 5(3) which provides for single point taxation has been omitted in its application to Section 5-C. Therefore, Explanation 3(d) to Section 2(t) of the Act has to be held in excess of legislative power conferred to the State Legislature under entry 54 of List II of the Seventh Schedule to the Constitution following the reasoning given while discussing the Maharashtra Act. We, accordingly, direct that Explanation 3(d) to Section 2(t) of the Act shall be read down to this effect that it would not be applicable to the transactions of transfer of right to use any goods if such deemed sale is (i) an outside sale, (ii) sale in course of the import of the goods into or export of the goods out of the territory of India and (iii) an inter-State sale.

23. In view of the aforesaid decisions of the Supreme Court, it is clear that for the purpose of Section 3(a) of the Central Sales Tax Act, it is not necessary that the contract of sale must itself provide for and cause the movement of goods or that the movement of goods must be occasioned specifically in accordance with the terms of the contract of sale. It does not itself provide the movement of goods from one State to another where such movement is the result of a covenant in the contract of sale or is an incident of that contract. Therefore, the test is movement of goods from one State to another in the course of inter-State trade or commerce. The transfer of property in the State in which works contract is executed does not determine the situs of the sale.

24. However, Sri Anand, learned Government Advocate, contends that when a works contract is to be executed within the State, the transfer of property in the materials would obviously pass within the State and therefore, the authorities under the Act were justified in levying tax u/s 5B of the KST Act on the installation and commissioning of the lifts and elevators.

25. Section 3 of the Central Sales Tax Act, states, inter alia, that a sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce, if the sale or purchase,-

(a) occasions the movement of goods from one State to another; or

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

Such a sale or purchase in the course of inter-State trade or commerce is subject to sales tax under the Central Sales Tax Act, 1956.

The expression "sale" is defined in Section 2(q) of the Central Sales Tax Act, 1956, as meaning "any transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration". Therefore, to be a sale in the course of inter-State trade or commerce within the meaning of Section 3 of the Central Sales Tax Act, 1956, there must be a contract of sale preceding the movement of goods from one State to another and the movement of goods should have been caused and be a result of that contract of sale. If this be the true meaning of what is a sale in the course of inter-State trade or commerce so as to be exigible to tax under the Central Sales Tax Act, it would be, outside the legislative power of the State Legislature to tax, a sale being transfer of property in the goods involved in the execution of works contract.

26. In the present case, the respondent-company had been engaged in the execution of works contract at the premises of the contracted, who placed purchase orders with the branch office of the respondent-company at Bangalore. The branch office in turn communicates such purchase orders to the principal office of the respondent-company, which has its factory at Ghaziabad at U.P. The lifts and elevators were manufactured to the design and specification of the customers. The manufactured items were tested and thereafter dismantled and dispatched to the customers'' place in the State by way of stock transfers. The branch office of the respondent-company executes the works contract by installing and commissioning of the lifts and elevators at the customers'' place. Merely because the lifts and elevators are installed and commissioned in the State, it cannot be said that it is a local sale exigible to levy of tax u/s 5B of the Act on the ground that the actual transfer of property used in the works contract took place in the State of Karnataka. In view of the law declared by the apex Court in Builders Association''s case [1993] 88 STC 248 kar and Gannon Dunkerley''s case [1993] 88 STC 204 kar, it can be safely concluded that the principles for determining when a sale takes place in the course of inter-State trade or commerce laid down in Section 3 of the CST Act would apply equally to transfer of property in goods involved in the execution of works contract. Alternatively, it could be said that a transaction to be of inter-State character, it is as to in which State the transfer of property in goods is effected. At this stage, it may be useful to refer to the decision of Madras High Court in the case of State of Tamil Nadu v. Bombay Metal Depot [1978] 41 STC 140 bom, wherein the court has observed :

(iv) that where the description of the goods is clear and such goods have been sent in conformity with such description and have also been accepted by the purchaser on the basis that they conformed to the description, there is ascertainment and appropriation of the goods to the contract. Where the goods are ascertainable and goods of that description are despatched then the goods so despatched can be taken as appropriated to the contract unconditionally. The circumstance that the purchaser has a right of rejection does not postpone the transfer of property in the goods.

The Allahabad High Court in the case of Swastik Rubber Products (P.) Ltd. Vs. Commissioner of Sales Tax and Others, , while rejecting the plea of stock transfer as contended by the assessee, held that the movement of goods took place from one State to another and further, the transfer invoices denote the same quantity and the value of goods which were in the sale bill of the consignee State depot. This was dispatched to the identified customers. In other words, such dispatches from one State to another to an identified customer result in inter-State sale.

27. We respectfully agree with the conclusion reached by the Madras High Court in the case of The State of Tamil Nadu Vs. Bombay Metal Depot, , and that of Allahabad High Court in the case of Swastik Rubber Products (P.) Ltd. Vs. Commissioner of Sales Tax and Others, . In conclusion, we are of the view that for determining whether a transaction constitutes inter-State sales or intra-State sales the test that requires to be applied is whether the contract occasioned the movement of goods from one State to another.

28. In view of the foregoing discussions, in our opinion, the Tribunal has not decided erroneously the question of law raised before it and therefore, interference with the impugned order is not called for. Accordingly, the revision petitions filed by the State Government fails and they are rejected. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.