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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 26.11.2018

+ **ST.APPL.1/2018 & CM APPL. Nos.48717-48720/2018**

COMMISSIONER OF VALUE ADDED TAX, DELHI Appellant
Through: Mr.Satyakam, ASC (GNCTD)

versus

M/S OTIS ELEVATOR COMPANY (INDIA) LTD. Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

MR.JUSTICE S.RAVINDRA BHAT (OPEN COURT)

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1. The question of law urged on behalf of the appellant/Government of NCT of Delhi concerns the correctness of the finding of the Appellate Tribunal, Value Added Tax, Delhi [hereafter referred to as "VAT Tribunal"] that the supply of the goods from Mumbai to Delhi to execute the works contract, did not constitute inter-state sales within the meaning of the expression under the Central Sales Tax Act, 1956.

2. The Assessee is engaged in the business of supply, erection, commissioning and installation of lifts/elevators in various classes of places including residential buildings, government offices and hospitals. It is also a registered dealer under the provisions of Delhi Sales Tax Act, 1975. It, however, has its manufacturing facilities at Mumbai, where its components

are produced. The Mumbai unit also stores the products so manufactured. The Delhi Sales Tax Authorities sought to assess transactions for three distinct periods covering Assessments Years 2002-2003, 2003-2004 & 2004-2005. The Assessing Authority sought to hold that the burden of the local sales tax levy was laid upon the dealer, upon an analysis of the contracts entered into. What prevailed with the adjudicating authority was that the contracts were indivisible work contracts, title of each of the elevators passed onto the customer upon payment, and that for the purposes of dispute resolution, the Courts of Delhi had exclusive jurisdiction. The assessments were subjected to appeal; the Appellate Authority dismissed the assessee's contentions. Aggrieved, the assessee approached the VAT Tribunal, which by its common order set aside the orders of the First Appellate Authority. In so holding the Tribunal found that the goods were appropriated to the contract, which was concluded in Mumbai, upon acceptance of the offer/placing orders.

3. Learned counsel sought to urge that the Tribunal made an error in holding that the Delhi Sales Tax Act, 1975 did not apply. He relied upon the decision in *Kone Elevators India Pvt. Ltd. vs. State of Tamil Nadu and Ors.* (2014) 7 SCC 1 and also stated that the sale of the right to use the elevators was concluded in Delhi, which was also the place of performance of the contract i.e. installation and commissioning. He also relied upon the judgment of the Supreme Court in *Larsen and Turbo Limited Vs. State of Karnataka* (2014) 1 SCC 708. The relevant findings of the VAT Tribunal, allowing the assessee's appeal are as follows:

“25. The above decisions make it amply clear that the goods that are moved form outside the state constitute interstate sale and are to be treated as such.

26. *Ld FAA rejecting the appeals has observed that :-*

(i) The dealer has entered into works contract with various contractee in Delhi for supply and installation of elevators / lifts. The contractee have deducted TDS, which supports the arguments of revenue that the transactions entered into by the dealer are not central sales but the works contract executed in Delhi.

(ii) As held in the case of Builders Association:-

"Ordinarily unless there is a contract to the contrary in the case of works contract the property in the goods used in the construction of a building passes to the owner of the land on which the building is constructed, when the goods or materials used are incorporated in the building."

(iii) Accordingly the property in goods passes in Delhi at the time of execution of works. But on going through the contract (which are similar in all cases) the time of transfer of property is when full payment is made; some of the clauses have been reproduced below –

"Page 6 first para - The price quoted / confirmed is based on the cost of raw materials /components and labour cost as on the date of quotation and the same is deemed to be related to Wholesale Price Index Number for Metal Products and All India Average Consumer Price Index Number for Industrial Workers as specified below. In case of any variation in these index numbers, the price shall be subject to adjustment up or down in accordance with the following formula

page 6 last para - PAYMENT TERMS:- under this clause claim for manufactured materials shall be paid along with our material invoice and claim for installation labour shall be paid along with our final invoice.

Page 7 clause 6 CONDITIONS OF CONTRACT

6. Payment shall be made pro rata per elevator as follows: 30% with your acceptance of this proposal, 60% on receipt of advice from us that materials are ready for dispatch, and the remaining 10% on completion of our installation work, with the further provision. We reserve the right to dispose of the equipment or to discontinue our work or to withhold the release of completed elevator(s) at any time until overdue payments.

Page 7 clause 10. - The title to each elevator shall pass to you when all payments for such elevator are received. We shall retain the right to lien and the right to retake possession of the elevator or any part thereof at your cost if default is made by you in any of the payments, irrespective of the manner of attachment to the realty, the acceptance of notes, extension of time for payment, or any security which we might hold, or the sale, mortgage or lease of the premises. This will be without prejudice to our right to recover the unpaid amounts and interest by any means or process or proceedings whatsoever. We shall be entitled to recover from you legal expenses incurred in collecting payments hereunder.

Page 7 clause 11 Whenever, either in our quotation or in our correspondence, a separate price is stated for labour or erection, the same is done for the facility of recovering advances or adjusting the price of the

entire contract. The breakup of the contract price into its various components at any stage does not signify any divisibility of this contract, so as to involve sale of movables at any stage. The contract shall be deemed to be an indivisible works contract.

Page 8 clause 15 - This contract being an indivisible Works Contract, any packing cases, or left over materials or tools tackles, instruments etc. brought to site are and shall remain our property. We reserve the right to sub-contract the work as and when we deem fit.

Page 8 clause 17 - The equipment offered by us has been described in our attached specifications and complete equipment will be supplied and installed as per standard Otis Design, manufacture and practice. In case of any variation between your specifications, terms and conditions and our quotation/ specifications / correspondence, the latter shall prevail.

Page 8 clause 21 - The contract is deemed to be concluded at NEW DELHI and only Courts in this place shall have jurisdiction in the event of any dispute whatsoever.

(iv) There is nothing on record that the lifts are manufactured at Bombay and then send to Delhi in semi-knock down state and fixed here as such it is a interstate sale. The sample agreement placed on file does not mention that goods are to be delivered from Bombay. There is no mention in the agreement that specific goods are to be used in installation of lifts and these are to be procured from Bombay or elsewhere i.e. there is no privity of contract to send the ports from Bombay Office.

Company is manufacturing standard type elevators/ lifts shown in its price list catalogue. The lifts are not being manufactured as per specifications of any particular customer can be delivered / sold to any customer. Hence it was not a 3(a) sale as defined under CST Act, 1956.

27. Appellant has placed on record copy of a contract giving specification for supply, installation and commissioning of elevator at the customer's site at 8, Vaishali, Pitampura Delhi is submitted. The proposal contains detailed specifications of the lifts as ordered by the New Delhi based customer. These specifications are as per the individual requirements of the customer. Appellant's submission is that a specific contract number is affixed on each of the contract with the customer and the same affixed contract number also figures in the invoice issued by the appellant, while the invoice indicates that the consignee is the Delhi Branch office of the appellant, the site address clearly shows that the elevators have to be supplied to and installed at 8, Vaishali Pitampura, Delhi. This sample contract placed on record shows the following specifications of the lifts to be supplied under the contract:-

<i>TRAVEL</i>	<i>GR 1st FLOOR to 3rd FLOOR ABOUT 9.9 MTRS</i>
<i>STOPS & OPENINGS</i>	<i>4 STOPS /4 OPENINGS (ALL OPENINGS ON SAME SIDE)</i>
<i>POWER SUPPLY</i>	<i>415 VOLTS 3 PHASE 50 CYCLE A.C. LIGHT SUPPL 230 VOLTS SINGLE PHASE 50 CCLE A.C.</i>
<i>CONTROL</i>	<i>OICS-1</i>
<i>OPERATION</i>	<i>SINGLE AUTOMATIC PUSH BUTTON</i>

<i>MACHINE</i>	<i>GEARED TRACTION VTR MACHINE OF OTIS DESIGN PLACED DIRECTLY ABOVE THE HOISTWA IN THE MACHINE ROOM</i>
<i>CAR SIZE</i>	<i>ABOUT 1170 MM WIDE X 940 MM DEEP INSIDE DIMENSIONS</i>
<i>HOISTWAT REQUIYRED</i>	<i>ABOUT 1600 MM WIDE X 1400 MM DEEP INSIDE DIMENSIONS</i>
<i>CAR ENTRANCE</i>	<i>PROTETED B IMPERFORATED CAR DOOR CIFAP OPENING, 700 MM WIDTH X 2000 MM HEIGHT</i>
<i>CAR ENCLOSURE</i>	<i>CLASSIC STEEL CAR DESIGN IND-140</i>
<i>HOISTWA ENTERANCES</i>	<i>PROTECTED BY IMPERFORATED LANDING DOORS CITEAP OPEING, 700 MM WIDTHX 2000 MM HEIGHT</i>
<i>DOOR OPERATION</i>	<i>MANUAL</i>
<i>SIGNALS STAINLESS STEEL FACE PLATES</i>	<i>COMBINED HALL BUTTONS AND DIGITAL HALL POSITON INDICATOR AT ALL FLOORS BATTERY OPERATED ALARM BELL & EMERGENCY LIGHT DIGITAL CAR POSITION INDICATOR IN CAR FIREMAN'S SWITCH AT GROUND FLOOR MACHINE, MOTOR, CONTROLLER, GOVERNOR,</i>

GENERAL	RAIL GUIDES CAR FRAME, CAR SAFETY COUNTER WEIGHT, SPRING BUFFERS, ROPES, RETIRING CAM HOISTWAY INTERLOCKS, TRAVELLING CABLES AND WIRING ETC, WILL BE PROVIDED
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28. Bills enclosed showing transfer of the goods bearing the contract reference number, while show OTIS Elevator Himalaya House as the Consignee, the site address is shown as OTIS REP: WADHWA COMPLEX, 8 Vaishali, Pitampura, New Delhi.

29. In *Sahney Steel and Press Works Ltd and another, Vs CTO and Others (1985) 60 STC 301* and *English Electric Company of India Ltd Vs The Deputy Commercial Tax Officer and Others (1976) 38 STC 475* it has been held that a company with head office in one State and branches in various other States is one legal entity. These judgments also lay down that where orders for supply of goods are placed with a branch and goods are supplied in pursuance of that order by the factory in the other State, the sale will be Inter State sale.

30. In our considered view the, the facts as noticed from the aforesaid specifications and the invoices issued in pursuance to the contract are sufficient to hold. that the goods that moved from outside Delhi for execution of the works contract are interstate sale and as such cannot be taxed under the Delhi Sales Tax on Works Contract Act, 1999.”

4. This Court is of the opinion that the appreciation of the law by the Tribunal in this case is sound and unexceptionable. The placement of an order by the agent for procurement of the lifts in this case was merely an offer. It is only upon its acceptance and further steps taken by the supplier

that an offer crystallizes into a binding promise or contract. That took place in Mumbai. It is now too far well settled that the incidence of Central Sales Tax or even sale of goods, occurs where the goods are appropriated to the contract. In this case, the place where the appropriation took place, is undoubtedly Mumbai. This Court's conclusion is also supported by a similar reasoning adopted in *Thyseenkrupp Elevator (India) Private Ltd. Vs. Assistant Commissioner of Commercial Taxes & Anr.* [W.P.No. 13607/2017], decided by the Karnataka High Court on 24th April, 2018.

5. In view of the above discussion, we are of the opinion that no question of law arises and it is consequently dismissed.

S. RAVINDRA BHAT
(JUDGE)

PRATEEK JALAN
(JUDGE)

NOVEMBER 26, 2018

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