

Notes on judgment dated 06.05.2014 of the Apex Court in case of M/s Kone Elevator India Pvt. Ltd. Vrs. Union of India & others in W. P. (C) No. 428/2009

The question whether assembling components of a lift would be a works contract or sale (including interstate sale) had been earlier decided by division bench of the Hon'ble Supreme Court of India in case of M/s Kone Elevator Vrs. State of Tamilnadu and reported in 14 SCC 788 (2010) (S.C.). However, the decision was doubted by the Hon'ble Supreme Court of India itself, and was referred to the larger bench of five numbers in which State of Orissa was one of the respondents.

Now, the Hon'ble Supreme Court of India in their judgment dated 06.05.2014 have decided the assembly & installation of lift as a works contract in a path breaking judgment as follows:-

“Once there is a composite contract for supply & installation, it has to be treated as a work contract, for it is not a sale of goods / chattel simpliciter. It is not chattel sold as chattel. The contract itself profoundly speaks of the obligation to supply goods & materials as well as installation of the lift which obviously conveys performance of labour & service. Hence, the fundamental characteristics of works contract are satisfied.

The Apex Court further held that where the assessments have attained finality & are not pending in appeal, they shall be treated to have been closed & whereas the assessments are challenged in appeal or revision, the same shall be decided in accordance with the decision rendered in the case.”

It is to be borne in mind that the judgment of the Supreme Court of India in case of M/s Bharat Heavy Electrical Ltd. Vrs. State of Orissa reported 102 STC, 373 which is also a decision in the same subject, would have to be distinguished since the present judgment is by a larger bench.

The operative part of the judgment from page No. 215-219 is given in the next pages for view.

Elevators (India) Pvt. Ltd. (supra) has been correctly decided.

The Reference is, therefore, answered on the above terms.

.....J.

[Fakkir Mohamed Ibrahim Kalifulla]

New Delhi

May 06, 2014

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL/APPELLATE JURISDICTION

WRIT PETITION (C) NO. 232 OF 2005

JUDGMENT

M/S. Kone Elevator India Pvt. Ltd.

... Petitioner

Versus

State of Tamil Nadu and Ors.

... Respondents

WITH

Writ Petition (Civil) Nos. 298/2005, 487/2005,
528/2005, 67/2006, 511/2006, 75/2007,
519/2008, 531/2008, 548/2008, 569/2008,

186/2009, 23/2010, 62/2010, 232/2010,
 279/2010, 377/2010, 112/2011, 137/2011,
 181/2011, 207/2011, 278/2011, 243/2011,
 372/2011, 398/2011, 381/2011, 468/2011,
 547/2011, 107/2012, 125/2012, 196/2012,
 263/2012, 404/2012, 567/2012, 145/2013,
 241/2013, 454/2013, 404/2013, 723/2013,
 440/2012, 441/2012, 156/2013, 533/2013,
 403/2012, 824/2013, 428/2009, 1046/2013,
 1047/2013, 1048/2013, 1049/2013, 1050/2013,
 1051/2013 1052/2013, 1098/2013,

WITH

Civil Appeal Nos. 5116-5121 of 2014
 (Arising out of SLP (C) Nos. 14148-14153/2005)

WITH

Civil Appeal Nos. 5135-5141 of 2014
 (Arising out of SLP (C) Nos. 14961-14967/2005)

WITH

Civil Appeal Nos. 5142-5147 of 2014
 [Arising out of SLP (C) Nos. 17842-17847/2005]

WITH

Civil Appeal No. 5152 of 2014
 [Arising out of SLP (C) No. 5377/2006]

WITH

Civil Appeal No. 5153 of 2014
 [Arising out of SLP (C) No. 7037/2006]

WITH

Civil Appeal No. 5154 of 2014
 [Arising out of SLP (C) No. 30272/2008]

WITH

Civil Appeal No. 5156 of 2014
 [Arising out of SLP (C) No. 30279/2008]

WITH

Civil Appeal No. 5157 of 2014
[Arising out of SLP (C) No. 5289/2009
WITH
Civil Appeal Nos. 5159-5160 of 2014
[Arising out of SLP (C) Nos. 6520-6521/2009
WITH
Civil Appeal Nos. 5162-5164 of 2014
[Arising out of SLP (C) Nos. 4469-4471/2010
WITH
Civil Appeal No. 5165 of 2014
[Arising out of SLP (C) No. 11258/2010
WITH
Civil Appeal No. 5166 of 2014
[Arising out of SLP (C) No. 17228/2010
WITH
Civil Appeal Nos. 5167-5168 of 2014
[Arising out of SLP (C) Nos. 17236-17237/2010
WITH
Civil Appeal Nos. 5170-5172 of 2014
[Arising out of SLP (C) Nos. 23259-23261/2010
WITH
Civil Appeal No. 5174 of 2014
[Arising out of SLP (C) No. 15732/2011
WITH
Civil Appeal No. 5175 of 2014
[Arising out of SLP (C) No. 16466/2011
WITH
Civil Appeal No. 5178 of 2014
[Arising out of SLP (C) No. 16137/2011
WITH
Civil Appeal No. 5179 of 2014
[Arising out of SLP (C) No. 5503/2011
WITH
Civil Appeal No. 5180 of 2014
[Arising out of SLP (C) No. 11147/2011
WITH
Civil Appeal Nos. 5181-5192 of 2014
[Arising out of SLP (C) Nos. 11227-11238/2012

WITH
Civil Appeal No. 5193 of 2014
[Arising out of SLP (C) No. 19901/2013
WITH
Civil Appeal Nos. 5195-5206 of 2014
[Arising out of SLP (C) Nos. 36001-36012/2013 and
WITH
Civil Appeal No. 6285/2010

ORDER

Keeping in view the conclusions of the majority, expressed in the judgment of Dipak Misra, J., it is held that the decision rendered in ***State of A.P. v. Kone Elevators***⁴⁶ does not correctly lay down the law and it is accordingly overruled.

2. It is directed that the show-cause notices, which have been issued by taking recourse to reopening of assessment, shall stand quashed. The assessment orders which have been framed and are under assail before this Court are set aside. It is necessary to state here that where the assessments have been framed and have attained finality and are not pending in appeal, they shall be treated to have been closed, and where the

⁴⁶ (2005) 3 SCC 389

assessments are challenged in appeal or revision, the same shall be decided in accordance with the decision rendered by us.

3. The writ petitions and the civil appeals are disposed of with no order as to costs.

.....CJI.
[R.M. Lodha]
.....J.
[A.K. Patnaik]
.....J.
[Sudhansu Jyoti Mukhopadhaya]
.....J.
[Dipak Misra]
.....J.
[F.M. Ibrahim Kalifulla]

New Delhi;
May 06, 2014.

JUDGMENT