

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO.232 OF 2005

(For Prel. Hearing)

M/S. KONE ELEVATOR INDIA PVT. LTD.

Petitioner(s)

VERSUS

STATE OF T.N. & ORS.

Respondent(s)

(With appln(s) for ex-parte stay)

Date: 12/05/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL

HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Petitioner(s)

Mr. Harish N. Salve, Sr. Adv.

Mr. M.L. Verma, Sr. Adv.

Mr. K.K. Mani, Adv.

Mr. R.L. Ramani, Adv.

Ms. Manika Pandey, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following

O R D E R

(India) In State of Andhra Pradesh vs. M/s. Kone Elevators

Limited (2005 (3) S.C.C.389), a three-Judge Bench has come to the conclusion, on facts, that the major component of the end-product is the material consumed in producing the lift to be delivered and the skill and labour employed for converting the main components into the end-product was only incidentally used and, therefore, the delivery of the end-product by the assessee to the

...2/-

- 2 -

customer constituted a 'sale' and not a 'works-contract'. Hence, transactions in question constitute 'sale' in terms of Entry 82 of the first schedule to the Andhra Pradesh General Sales Tax Act, under consideration in the said case and, therefore, Section 5-G of the Act was not applicable.

Our attention has been drawn to Vanguard Rolling Shutters & Steel Works vs. Commissioner of Sales Tax, Uttar Pradesh (39 S.T.C. 372) whereby relying upon another three-Judge Bench decision in the case of State of Rajasthan & Anr. vs. Man Industrial Corporation Limited (24 S.T.C.349), though dealing with shutters in somewhat similar circumstances, this Court held that it was work contract. The basis for issue of notices impugned in this writ petition is the decision of this Court in M/s. Kone Elevators (India) Limited (supra).

Issue notice, returnable before a Bench of three learned Judges.

No orders on the application for ex-parte stay.

[T.I. Rajput]

[V.P. Tyagi]

Court Master

Court Master