

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

OWP No. 908/2006 **Date of Decision: 11.08.2011**
CMP No. 1226/2006
OWP No. 44/2007 & CMP No. 49/2007

1.Siemens Ltd. and anr. v. State of J&K & ors.
2.Siemens Ltd. v. State of J&K & ors.

Coram:
Mr. Justice J.P.Singh.

Appearing Counsel:
For the Petitioner(s) : Mr. D.C.Raina, Sr. Advocate with Ms. Ananta Raina,
Advocate.

For the Respondent(s) : Mr. Rohit Kapoor, Advocate.

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| i) | Whether approved for reporting
in Press/Media | : | Yes |
| ii) | Whether to be reported
in Digest/Journal | : | Yes |
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Two C.T Scanners complete with accessories (SOMATOM) covered by G/R Nos. 705037 & 705038, loaded in Trucks bearing registration Nos. JK02V-0437 and JK02E-6207, & G/R Nos. 710829 & 710288, loaded in Trucks bearing Registration Nos. MH04CA-8847 and RJ271 G-1632, transported by the Petitioner-Siemens Limited, a Company incorporated under the Indian Companies Act, 1956, were seized at Lakhanpur Check Post on September 26, 2006 and November 10, 2006 respectively.

By Statutory Notices dated September 26, 2006 and November 10, 2006, the Petitioner-Company was called upon to furnish security of the amount indicated therein, because the

seized goods, suspected taxable, were imported by an unregistered Dealer.

The Petitioner was heard on the Notices, whereafter, the Assessing Authority Commercial Taxes Check Post Lakhanpur adjudging it liable to tax, imposed security to the tune of Rs.44,51,952 and Rs.42,72,211 respectively on the two C.T Scanners vide its Orders dated October 05, 2006 and November 17, 2006.

The Petitioner-Company has questioned the Notices and the Orders imposing security, by its two Writ Petitions OWP Nos. 908/2006 and 44/2007.

Notice of September 26, 2006 and Order of October 05, 2006 have been questioned in Writ Petition OWP No. 908/2006, and Notice of November 10, 2006 and Order dated November 17, 2006 in Writ Petition OWP No.44/2007.

As a common question of law, as to the liability or otherwise of the Petitioner-Company, to deposit Security in terms of Section 15-A (9) of the Jammu & Kashmir General Sales Tax Act, 1962, arises for determination in the Petitions. These were, therefore, heard together and are being disposed of by this common judgment.

According to the Assessing Authority, the Petitioner-Company was awarded a complete Works Contract, both machinery and site preparation were integral and inseparable

parts thereof, so it was liable to security for the tax liability because the goods were imported by an unregistered Dealer.

As against this, the Petitioner-Company denies its liability to Security in terms of the provisions of Section 15-A (9) of the Jammu & Kashmir General Sales Tax Act, urging that it was registered as a 'Dealer' for its Works Contract and the goods needed by it to extend 'Services' as a Works Contractor, were not taxable, hence imposition of Security under Section 15-A (9) of the Act was unwarranted.

To support its case, it relies on its Registration Certificate No. 6080623 issued under the Central Sales Tax (Registration & Turnover) Rules, 1957 and Registration No. 208233 issued under the Jammu & Kashmir General Sales Tax Act, besides the Assessing Authority, Circle-H Srinagar's Order dated 01.06.2009, which reflects it as a Works Contractor/Supplier.

According to the learned Senior Counsel, appearing for the Petitioner-Company, the Petitioner-Company's registration as 'Dealer' was not a limited registration for 're-sale' of the specified goods, as projected by the State-respondents; but, as a matter of fact, was a Registration for rendering services as a Works Contractor too; the Company was, therefore, not liable to tax and security on the goods required for rendering 'Services' in terms of its Contract with the Union of India, additionally because the 'goods' and 'sale' contemplated by the provisions

of Section 2 of the Act includes the 'Services' rendered by a Works Contractor.

Learned State counsel, on the other hand, would submit that as the seized goods were imported into the State of Jammu & Kashmir by the Petitioner-Company to execute its Contract for commissioning Multi-Slice C.T Scanner, after its installation at site, on Turnkey basis, the service tax was leviable on the total value of the Contract which was Rs. 5.29 Crore in respect of consignment covered by GR Nos. 705037 and 705038 and Rs. 5.08 Crore in respect of consignment covered by GR Nos. 710829 and 710288.

Justifying the Authority's demand of Security of Rs.44,51,952/- and Rs.42,72,211/-, the learned counsel says that the Petitioner-Company was registered as Dealer under the General Sales Tax Act for goods indicated in Annexure 'A' of the Certificate for '**use in re-sale**' only, and such Registration would not amount to its registration as a 'Works Contractor' and the Company was, therefore, liable to tax and security under Section 15-A (9) of the Act, being an unregistered Dealer as 'Works Contractor'.

Considered the submissions of learned counsel for the parties, perused the documents placed on records and the orders passed by the Assessing authority.

The Petitioner-Company is stated to have been registered

as a Dealer under Section 6 of the Jammu and Kashmir General Sales Tax Act, 1962 and the Central Sales Tax (Registration and Turnover) Rules, 1957. The Certificates of Registration issued in this behalf have been placed on records.

In terms of the Certificates, the Petitioner-Company is registered to deal in sale/purchase of goods which include Electro-Medical Equipments, Surgical Equipments, Dental Equipments and Hearing Aids, Accessories and Spare Parts thereof, FOR USE IN RE-SALE.

The question that, therefore, arises for consideration is as to whether the petitioner's registration as "Dealer" to deal in sale and purchase of goods indicated in the Registration Certificates, would include it to have been registered for executing a Works Contract to render Services in terms of the Turnkey Agreement entered into by it with the Union of India.

To deal with the question, regard needs to be had to the Agreement dated 29.03.2006, in terms whereof, the Petitioner-Company had agreed to install CT-Scanners, *inter alia*, in the State of Jammu and Kashmir on Turnkey basis.

The Turnkey Agreement entered into by the petitioner-Company with the Union of India reveals that 15% of the total Turnkey was payable to the Petitioner-Company till completion of installation, 65% after completion of the site preparation and balance 20% after installation/commissioning/handing over the

building to the consignee Hospital by the Military Engineering Service. The Agreement further says that the Jammu and Kashmir Service/Entry Tax etc. payable at actuals was re-imbursable on production of documentary evidence.

In terms of the Agreement, the Contractor is responsible to ensure that the packing offered was worthy of withstanding the hazards of rail/road journey and will arrange for the free replacement of the breakage/loss enroute. They are responsible for safe arrival of goods at destination.

After the completion of supply, i.e., installation and satisfactory handing over of the equipment including A.C Plant, DG Set and other items in perfect working condition to the consignees, the equipment shall be under performance guarantee for a period of 05 years.

Learned counsel for the petitioner did not dispute that to complete its contractual obligation under the Contract, the Petitioner-Company had to import the machinery required for the Turnkey into the State of Jammu and Kashmir.

In view of the above factual scenario, I proceed to examine the formulated question, in the light of the provisions of the Jammu & Kashmir General Sales Tax Act, 1962 and the documents placed on records by the Petitioner-Company.

The Certificate of petitioner's registration as Dealer under the Jammu & Kashmir General Sales Tax Act reveals that the

Petitioner-Company is registered as a Dealer in respect of the items appearing in Annexure 'A' to the Certificate, which, *inter alia*, include Electro-medical equipments; *but only for use in re-sale*. This registration does not register it as a Dealer for the purposes of rendering 'Services' as contemplated by Section 2 (L) (v) of the Act. In other words, the Petitioner-Company's Registration is limited and permits it to deal in the items indicated in Annexure 'A' to the Certificate, only for the purpose of re-sale. The Company has not been registered under the Act as a Works Contractor to render 'Services', referred to hereinabove.

The petitioner's learned counsel's plea that petitioner's reflection as Works Contractor in Assessing Authority Circle-H, Srinagar's Assessment Orders would indicate that the petitioner was registered as a Dealer in respect of its Works Contract too, is found without merit, in that, the petitioner's reflection as a Works Contractor in the Assessment Order, would not, as such, make it a registered Dealer, in the absence of its specific registration as such, because Assessing Authority's reference to it as a Works Contractor/Supplier in the title of the Assessment Order, neither acknowledges it to be a Works Contractor nor is there any finding to this effect in the Assessment Order that the petitioner was registered under the General Sales Tax Act as a Dealer for rendering Services in

terms of Section 2 (L) (v) of the Act. Therefore, in the absence of any adjudication and decision thereon, on the petitioner's registration as a Works Contractor, the petitioner cannot be said to have been registered as a Dealer for rendering Services as a Works Contractor only because in the title of the Assessment Order it came to be referred as a Works Contractor.

Although the Services which the Petitioner-Company is to provide in terms of its Contract, fall within the definition of 'Goods' as defined under Section 2 (h) (1-a) of the Act and amount to 'Sale' in terms of the provisions of Section 2 (L) (v) of the Act, yet in view of its limited registration as a Dealer to deal in sale and purchase of the goods for purposes of re-sale, it cannot be said to be a registered Dealer for rendering 'Services' contemplated by its Agreement because the Registration Certificate does not register it as a Dealer for Works Contract to render Services contemplated by the Agreement.

The findings recorded by the Assessing Authority Commercial Taxes Check Post Lakhanpur to the effect that the petitioner was an unregistered Dealer and was transporting taxable goods which warranted seizure and imposition of Security under Section 15-A (9) of the Act, treating the machinery and the site preparation as integral and inseparable

parts of the Turnkey Agreement entered into by the petitioner with Union of India, when looked in the light of various Clauses of the petitioner-Company's Contract Agreement, are found to be well merited.

There is, therefore, no merit in the case set up by the petitioner that it was a registered Dealer and was not liable to imposition of Security in terms of Section 15-A (9) of the Act.

The challenge thrown by the petitioner-Company to the Statutory Notices and orders passed by the Assessing Authority Commercial Taxes Check Post Lakhapur under Section 15-A (9) the Jammu and Kashmir General Sales Tax Act, 1962, therefore, fails.

These Writ Petitions are, accordingly, found without merit, hence dismissed.

(J.P. SINGH)
JUDGE

JAMMU
11.08.2011
Pawan Chopra