

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

Petition(s) for Special Leave to Appeal (Civil)...../2012
CC 14914-14915/2012

(From the judgement and order dated 23/12/2011 in WT No. 1178/2008, WT No.36/2009 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

M/S SURYA PROCESSORS P.LTD.

Petitioner(s)

VERSUS

STATE OF U.P.& ORS.

Respondent(s)

(With appln(s) for c/delay in filing SLP and office report)

Date: 07/09/2012 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.L. DATTU

HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD

For Petitioner(s) Mr. Pankaj Bhatia, Adv.
Dr. Kailash Chand, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

Delay condoned.

Notice to the respondents.

Leave granted.

In this Civil Appeal, the appellant is questioning the correctness or otherwise of the common judgment and order passed by the High Court of Judicature of Allahabad in Writ Tax Nos.1178 of 2008 and 36 of 2009 dated 23.12.2011.

In the Writ Petitions filed, the appellant and others had questioned the constitutional validity of the U.P. Tax on Entry of Goods Into Local Areas Act, 2007 ('U.P.Act, 2007' for short).

We have heard learned counsel for the parties on the prayer made for grant of interim relief and also perused the records.

We are not inclined to grant the blanket stay order as prayed for by the appellant. Accordingly, we pass the following order :

The operation of the impugned judgment and order is stayed subject to the appellant depositing 50% of the accrued tax liability/arrears under the U.P.Act, 2007 and furnish bank guarantee for the balance amount within four weeks from today. It goes without saying, that the aforesaid deposit shall be made after adjusting the amount(s) paid or deposited during the pendency of the Writ Petitions before the High Court. The appellant is directed to keep the bank guarantee(s) alive during the pendency of this appeal. The amount(s) so deposited/paid and the bank guarantee(s) furnished is subject to the result of this appeal.

The appellant shall also deposit 50% of the tax liability/arrears, including interest and penalty, and furnish bank

guarantee for the balance amount as and when demand notices are issued under the U.P. Act, 2007 for the past period.

In default, the interim order(s) granted by this Court shall automatically stand vacated.

In case the State of Uttar Pradesh loses the matters at the time of final hearing, it shall refund to the appellant the amount deposited with interest at the rate which may be fixed by this Court.

It is also made clear that in case the appellant loses the matter, the Department is at liberty to encash the bank guarantee(s) offered by the appellant and also issue demand notice(s) demanding interest, and penalty on the amount outstanding as arrears of tax.

The appellant shall continue to pay the tax at the prevailing rate(s) for the future period as applicable to each one of the assesseees.

In view of the interim order passed by us, we expect that the Department shall not resort to coercive steps to recover the amounts due to the Department.

If for any reason, the appellant in this appeal wants to seek statutory remedies provided under the Act against the assessment orders, best judgment assessment orders, provisional assessment orders, appeals or revisions before appropriate forum, they are at

liberty to do so and if such appeal or revision is filed, we direct the statutory authorities to consider the same in accordance with law.

We also reserve liberty to the respondent-State of U.P. to verify the veracity of the statement made by the appellant in the affidavits filed insofar as the tax burden being passed on the consumers directly or indirectly.

Liberty is granted to the respondents to file appropriate application before this Court for modification of the interim orders granted, if for any reason, the appellant in this case has passed on the tax burden on the consumers.

(NAVEEN KUMAR)
COURT MASTER

(VINOD KULVI)
COURT MASTER