

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) No(s).4841/2012  
(From the judgement and order dated 23/12/2011 in CMWP  
No.1385/2010 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

M/S BINANI CEMENT LTD. Petitioner(s)

VERSUS

STATE OF U.P.& ORS. Respondent(s)  
(With appln(s) for exemption from filing c/c of the impugned  
Judgment,exemption from filing O.T. and office report )  
I.A.NO.3 (Appln.for permission to file addl.affidavit)

WITH SLP(C) NO. 5088 of 2012  
(With appln.(s) for exemption from filing c/c of the impugned  
judgment and with prayer for interim relief and office report)

SLP(C) NO. 5112 of 2012  
(With prayer for interim relief and office report)

SLP(C) NO. 5525 of 2012  
(With appln(s) for exemption from filing O.T. and with prayer  
for interim relief and office report)

SLP(C) NO. 5531 of 2012  
(With appln.(s) for exemption from filing c/c of the impugned  
judgment and with prayer for interim relief and office report)

SLP(C) NO. 5621 of 2012  
(With appln.(s) for exemption from filing c/c of the impugned  
Judgment,exemption from filing O.T. and with prayer for interim  
relief and office report)

SLP(C) NO. 5627 of 2012  
(With appln.(s) for exemption from filing c/c of the impugned  
Judgment,exemption from filing O.T. and with prayer for interim  
relief and office report)

SLP(C) NO. 5685 of 2012  
(With appln.(s) for permission to place addl.documents on  
record and permission to file synopsis and list of dates and  
with prayer for interim relief and office report)

SLP(C) NO. 5863-5866 of 2012  
(With appln.(s) for exemption from filing c/c of the impugned  
judgment and with prayer for interim relief and office report)  
I.A.Nos.5-8(Applns.for interim relief)

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SLP(C) NO. 5915-5920 of 2012  
(With appln.(s) for exemption from filing c/c of the impugned  
judgment and with prayer for interim relief and office report)  
I.A.Nos.7-12 (Applns.for interim relief)

SLP(C) NO. 6032 of 2012  
(With appln.(s) for exemption from filing c/c of the impugned  
Judgment, exemption from filing O.T. and with prayer for  
interim relief and office report)

SLP(C) NO. 6055 of 2012  
(With appln.(s) for exemption from filing c/c of the impugned  
Judgment and with prayer for interim relief and office report)

SLP(C) NO. 6058 of 2012

(With appln.(s) for exemption from filing c/c of the impugned Judgment and with prayer for interim relief and office report)

SLP(C) NO. 6072 of 2012

(With appln.(s) for exemption from filing O.T. and with prayer for interim relief and office report)

SLP(C) NO. 6075 of 2012

(With appln.(s) for exemption from filing O.T. and with prayer for interim relief and office report)

SLP(C) NO. 6136 of 2012

(With appln(s) for exemption from filing O.T. and with prayer for interim relief and office report)

SLP(C) NO. 6188 of 2012

(With appln.(s) for exemption from filing c/c of the impugned judgment and with prayer for interim relief and office report)

SLP(C) NO. 5914 of 2012

(With appln.(s) for exemption from filing c/c of the impugned judgment and exemption from filing O.T. and permission to file addl.documents and with prayer for interim relief and office report)

SLP(C) NO. 5975 of 2012

(With appln.(s) for exemption from filing O.T. and permission to file addl.documents and with prayer for interim relief and office report)

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Date: 17/02/2012      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.Sudhir Gupta, Sr.Adv.  
                                 Mr. Amarjit Singh Bedi,Adv.  
                                 Mr.Dinesh Kumar, Adv.  
                                 Ms.Neha Kapoor, Adv.  
  
                                 Mr. Ghanshyam Joshi, Adv.  
                                 Mr.Gierish Kandpal, Adv.  
                                 Mr.Sanjiv Kumar Saxena, Adv.  
  
                                 Mr. Jay Savla, Adv.  
                                 Ms.Renuka Sahu, Adv.  
  
                                 Mr. Subramonium Prasad, Adv.  
                                 Mr.Vijay Nair, Adv.  
                                 Mr.Manoranjan Kumar, Adv.  
                                 Ms.Shweta Majumdar, Adv.  
  
                                 Mr.Shwetank Sailakwal, Adv.  
                                 Mr.Tanmay Agarwal, Adv.  
                                 Mr.Manoj Saxena, Adv.  
                                 Mr. Vipin Kumar Jai, Adv.  
  
                                 Mr.Dhruv Agarwal, Sr.Adv.  
                                 Mr.Shwetank Sailakwal, Adv.  
                                 Mr.Nishit Agarwal, Adv.  
                                 Mr. Vipin Kumar Jai, Adv.  
                                 Mr.Manoj Saxena, Adv.  
  
                                 Mr. P.S.Sudheer,Adv.

Mr.Nishant Mishra, Adv.  
Mr.Rishi Maheshwari, Adv.

Mr.Saurabh Ajay Gupta, Adv.

Mr.Anand Verma, Adv.  
Mr.V.K.Verma, Adv.

For Respondent(s) Mr.Sunil Gupta, Sr.Adv.  
Mr.Shail Kumar Dwivedi, AAG  
Mr. Gunnam Venkateswara Rao, Adv.  
Mr.Manoj Kumar Dwivedi, Adv.  
Mr.Aviral Shukla, Adv.

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

Applications for exemption from filing Official Translation are  
allowed.

I.A.No.3 is allowed.

Notice to the respondents.

Learned counsel appears and accepts notice on behalf of all  
the respondents in all the matters.

Leave granted in the Special Leave Petitions.

In these Civil Appeals, the appellants and others are  
questioning the correctness or otherwise of the common judgment and  
order dated 23.12.2011 passed by the High Court of Judicature at  
Allahabad in Writ-Tax No.1484 of 2007 etc.

In the Writ Petitions filed, the appellants 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 appellants. Accordingly, we pass the following order :

I. The operation of the impugned judgment and order is stayed  
subject to the appellants in each case depositing 50% of the accrued  
tax liability/arrears under the U.P.Act, 2007 and furnish bank  
guarantee(s) for the balance amount(s) 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 appellants are

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directed to keep the bank guarantee(s) alive during the pendency of these appeals. The amount(s) so deposited/paid and the bank guarantee(s) furnished is subject to the result of these appeals.

II. The appellants shall also deposit 50% of the tax liability/arrears, including interest and penalty, and furnish bank guarantee(s) for the balance amount(s) as and when demand notices are issued under the U.P.Act, 2007 for the past period.

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

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

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

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

VII. 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.

VIII. The interim order(s) passed by us will apply to only those cases where the appellants have filed the affidavits before this Court pursuant to the orders passed by us on 05.01.2012.

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IX. If for any reason, the appellants want 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 appeals or revisions are filed, we direct the statutory authorities to consider the same in accordance with law.

X. We also reserve liberty to the respondent-State of U.P. to verify the veracity of the statement made by the appellants in the

affidavits filed insofar as the tax burden being passed on the consumers directly or indirectly.

XI. 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 appellants in these cases have passed on the tax burden on the consumers.

(G.V.Ramana)  
Court Master

(Sharda Kapoor)  
Court Master