

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 4649-4650 OF 2012

WITH

INTERLOCUTORY APPLICATION NO.5-6

[Application for permission to file additional documents and pleadings]

M/s. Hindalco Industries Ltd.

.....Appellant(s)

-Versus-

State of U.P. & Others

.....Respondent(s)

OFFICE REPORT

The matters above-mentioned were listed before the Hon'ble Court on 10th May 2012, when the Court was pleased to pass the following orders:

“Delay condoned.

Issue notice.

In S.L.P. (C) Nos.8856-8857 of 2011, since the respondent Nos.1, 2 and 3, which include the State of U.P., are represented on caveat, service of notice on the said respondents is dispensed with. As far as the fourth respondent is concerned, since he is only a proforma respondent, against whom no relief has been sought for by the petitioner, service of notice on the said respondent is dispensed with.

In S.L.P. (C) No.CC 6482 of 2012, since the respondent Nos.1, 2 and 3, which include the State of U.P., are represented on caveat, service of notice on the said respondents is dispensed with.

We have been shown several orders passed in similar matters and in one of the matters, by an order dated 5th January, 2012, this Court initially directed the petitioners to file appropriate affidavits, indicating the arrears of entry tax payable by them and also to indicate as to whether they had passed on the entry tax liability to the consumers either directly or indirectly.

It appears that subsequently on 13th January, 2012, interim orders were passed, but with the stipulation that the same would be effective in respect of those appellants in whose cases affidavits have been filed in terms of the order passed on 5th January, 2012.

Similarly, in this case, the petitioner is directed to file an affidavit on the same lines within two weeks from date. If such an affidavit is filed, there will be an interim order in the manner as indicated in the order dated 13th January, 2012, in S.L.P. (C) No.351 of 2012.

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Leave granted.

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 furnishing 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 appellants are 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.

The appellants 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 appellants the amount deposited, with interest at the rate which may be fixed by this Court.

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

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.

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.

In the event the affidavit is not filed in the manner indicated herein-above, the interim order shall stand vacated.”

It is submitted that Counsel for the Appellant has on 23rd May 2012 filed Affidavit pursuant to Court's order quoted above. Copies of the same are included in the Paper Books.

It is further submitted that service of Notice of Lodgment of Petition of Appeal is complete on all the four respondents as Respondent Nos.1 to 3 are represented through Mr. R.P. Mehrotra, Advocate and service of notice in respect of Respondent No.4 stands dispensed with pursuant to above Court's Order.

It is further submitted that Counsel for the Petitioner has on 2nd March 2017 filed additional documents alongwith application for permission to file additional documents and pleadings. The said application has been registered as I.A. No.5-6. The Paper Books of the said additional documents are placed with Appeal Paper Books.

Thereafter, the matters were listed before the Hon'ble Court on 30th March 2017, when the Court was pleased to pass the following orders:

“List the matter on 11th April, 2017 along with entry tax matters of the State of Odisha.”

The matters alongwith applications above mentioned are listed before the Hon'ble Court with this Office Report.

Dated this the 10th day of April, 2017.

ASSISTANT REGISTRAR

Copy to:-

1. Mr. Syed Shahid Husain Rizvi, Advocate
2. Mr. R.P. Mehrotra, Advocate,

ASSISTANT REGISTRAR

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