

ITEM NO.17

COURT NO.2

SECTION III

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).8856-8857/2012

(From the judgement and order dated 23/12/2011 in WT No.1891/2006,  
WT No.382/2007 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

M/S HINDALCO INDUSTRIES 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 prayer for interim relief  
and office report)

WITH S.L.P.(C)...CC NO. 6482 of 2012

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

Date: 10/05/2012

These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR  
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

For Petitioner(s)

Mr. Syed Shahid Hussain Rizvi, AOR

Mr. Yashvardhan, Adv.  
Mr. Pratiush Pratik, Adv.  
Mr. Vipin Kumar Jai, AOR

For Respondent(s)

Mr. Vinay Garg, Adv.  
Ms. Jyoti Sharma, Adv.  
Mr. Gunnam Venkateswara Rao, AOR

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

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Delay condoned.  
Issue notice.

In S.L.P. (C) Nos.8856-8857 of 2011, since th  
e 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  
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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.

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.

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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.

(Chetan Kumar)  
Court Master

(Juginder Kaur)  
Assistant Registrar