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ITEM NO.38+70

COURT NO.9

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).10419/2012

(From the judgement and order(s) in WT No. 2030/2008 dated 23-DEC-11 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

M/S KAILASH MOTORS & ORS.

Petitioner(s)

VERSUS

STATE OF U.P.& ORS.

Respondent(s)

(With appln(s) for deletion of proforma respondents and with prayer for interim relief and office report)

WITH SLP(C) NO. 10071 of 2012

(With appln(s) for permission to file additional documents and with prayer for interim relief and office report)

SLP(C) NO. 11249 of 2012

(With prayer for interim relief and office report)

SLP(C) NO. 11326 of 2012

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

SLP(C) NO. 11367 of 2012

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

S.L.P.(C)...CC NO. 5984 of 2012

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

S.L.P.(C)...CC NO. 5985 of 2012

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

S.L.P.(C)...CC NO. 6335 of 2012

(With appln(s) for permission to file SLP and office report)

S.L.P.(C)...CC NO. 6468 of 2012

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

SLP(C) NO. 9220 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. 9791-9795 of 2012

(With appln(s) for exemption from filing c/c of the impugned judgment, exemption from filing O.T., permission to bring additional facts and documents on record and with prayer for interim relief and office report)

Date: 09/04/2012 These Petitions were called on for hearing today.

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CORAM : HON'BLE MR. JUSTICE H.L. DATTU
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD

For Petitioner(s) Mr. Rohan Gupta, Adv.
SLP(C)10419/12 Mr. Harsh Hariharan, Adv.
Mr. Shekhar Kumar, Adv.

Dr. Kailash Chand, Adv.

SLP(C) 9220/12 Mr. Suman Ashan, Adv.
Mr. Sanjeev Kumar, Adv.
M/S. Khaitan & Co.

Ms. Garima Prashad, Adv.

Mr. Vivek Gupta, Adv.

Mr. Harshuir Pratap Sharma, Adv.

Mr. Sharad Kumar Vaish, Adv.

Mr. Bankey Bihari Sharma, Adv.

Mr. S.S. Kulshetha, Adv.

SLP..CC 5984/12

Mr. Hasan Anzar, Adv.

cc..5985/12

Mr. Nasiruzzaman, Adv.

Mr. S.A. Siddiqui, Adv.

SLP(C) 9791-95/12
& 11367/12

Mr. Amit Singh, Adv.

Mr. Arvind Kumar, Adv.

For Respondent(s)

Mr. Sunil Gupta, Sr. Adv.

Mr. Manoj Dwivedi, Adv.

Mr. Gunnam Venkateswara Rao, Adv.

Mr. Aviral Shukla, Adv.

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

Permission to file SLP is granted.

Application for exemption from filing O.T. is allowed.

Delay condoned.

Notice to the respondents.

Name of proforma respondents are deleted from the array of parties at the risk of the petitioner in SLP(C) No.10419/2012.

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

Leave granted.

In these Civil Appeals, the appellants and others are questioning the correctness or otherwise of the common judgment and order passed by the High Court of Judicature of Allahabad in Writ Tax No. 2030 of 2008 etc. dated 23.12.2011.

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:

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 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 stands 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 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.

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

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one of the assessees.

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.

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.

If for any reason, the appellants in these appeals 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.

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.

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.

(NAVEEN KUMAR)
COURT MASTER

(SHARDA KAPOOR)
COURT MASTER