

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

CC 14046/2012

Petition(s) for Special Leave to Appeal (Civil)...../2012

(From the judgement and order dated 02/02/2012 in WT No.172/2012 of the HIGH COURT OF JUDICATURE AT ALLAHABAD)

M/S.GANESH POLYTEX LTD.

Petitioner(s)

VERSUS

STATE OF U.P. & ANR.

Respondent(s)

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

Date: 27/08/2012 This Petition was called on for hearing today.

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

For Petitioner(s) Mr. G. Prakash,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 at Allahabad in Writ Tax No.172 of 2012 dated 02.02.2012.

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In the present Writ Petition filed, the appellant herein 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 appellant 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 Petition 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

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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 matter at the time of final hearing, it shall refund to the appellant the amount so 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.

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

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

Liberty is also 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.

(G.V.Ramana)
Court Master

(Vinod Kulvi)
Court Master