

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

BEFORE THE REGISTRAR S.G. SHAH

Petition(s) for Special Leave to Appeal (Civil) No(s).22889/2008

COMMR.OF INCOME TAX & ORS.

Petitioner(s)

VERSUS

M/S EXIDE INDUSTRIES LTD.& ANR.

Respondent(s)

Date: 15/12/2008 This Petition was called on for hearing today.

For Petitioner(s) Mr. Devbrat,Adv.

Mr. B.V. Balaram Das,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
ORDER

Fresh notice to unserved respondent No.2 by registered post A.D. Dasti service in addition is allowed as prayed for which is permitted to be served through respondent NO.1 in view of the fact that both the respondents have filed writ petition before the Appellate Court as co-appellant and address of unserved respondent No.2, being petitioner No.2 in writ petition is disclosed as the same address of respondent No.1 company.

Learned Advocate Ms. Priya Hingorani appearing for respondent No.1 states that they have no instructions to appear for respondent No.2. It is further argued that it is not the responsibility of the learned counsel for respondent No. 1 to serve respondent No.2 and that no notice can be served through them for respondent No.2 and that it is the primary duty of the petitioner to serve the unserved respondent. It is further stated that it is not certain that unserved respondent No.2 is serving with respondent No.1 company as on date.

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It is pertinent to note that initially litigation by way of writ petition was preferred by present respondents as co-petitioners before the High Court of Calcutta in the year 2002 and even in the year of 2005 both of them have preferred A.P.O. before the High Court as co-appellants. Their names are shown as such in the judgment. Now though respondent No.1 is served at the given address, notice on respondent No.2 at the same address could not be served. The Hon'ble Court has passed an order on 8.9.2008 to issue notice. It is the duty of this court to see that notices are served at the earliest and matters become ready for hearing at the earliest. Therefore, considering the fact that unserved respondent No.2 has preferred original petition as well as an appeal (wherein impugned order was passed) as co-petitioners and co-appellants respectively and that since the addresses of both of them are the same, and that since they were represented before the High Court by one common advocate, and since their interest is common; the notice on respondent No.2 is ordered to serve through respondent No.1 through its advocate. However if at all respondent No.1 wants to say that respondent No.2 is not serving under it and that they are not ready and willing to accept notice on respondent No.2, then they are directed to file such confirmation on record. It is the duty of all litigants to help the judicial process so as to complete it at the earliest. More particularly in the present case when respondent No.1

is a company and unserved respondent No.2 seems to be its officer/employee, dasti notice on respondent No.2 is permitted to be served through respondent No.1 through its advocate and if respondent No.1 wants to refuse such dasti service then they are directed to file an affidavit disclosing the present status of respondent No.2 i.e. whether he is serving under them or not. If he is not serving under

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him, they are directed to disclose details of unserved respondent No.2 like his residential address etc. from their record since they were co-petitioners and they have disclosed their office addresses only while initiating legal proceeding before the High Court.

Served respondents may file counter affidavit.

List the matter on 3.2.2009 for confirmation of notice and for filing of counter affidavit.

(S.G.SHAH)
Registrar