

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

I.A. No.5 in
Petition(s) for Special Leave to Appeal (Civil) No(s).14828/2008

(From the judgement and order dated 15/05/2008 in WP No.6362/2006 of The HIGH COURT OF M.P. AT JABALPUR)

JAIPRAKASH ASSOCIATES LTD Petitioner(s)

VERSUS

STATE OF M.P. & ORS. Respondent(s)

(For modification of Court's order dated 15/09/2009)

With I.A. No.1 in S.L.P. (C) No.10936 of 2008
(For appropriate order/directions)

I.A. Nos.327-651 in S.L.P. (C) No.14454-14778 of 2008
(For stay and office report)

I.A. No.1 in S.L.P. (C) No.15090 of 2009
(For Directions and office report)

I.A. No.3 in S.L.P. (C) No.26813 of 2008
(For stay/direction)

I.A. No.2 in S.L.P. (C) No.15723 of 2009
(For vacation of ex-parte stay of this Court's order dated 08/07/2009 and office report)

I.A. No.3 in S.L.P. (C) No.14949 of 2009
(For Directions and office report)

I.A. No.6 in Civil Appeal No.4715 of 2008
(For stay/directions and office report)

I.A. No.8 in Civil Appeal No.3453 of 2002
(For interim stay and office report)

Date: 30/10/2009 These Matters were called on for hearing today.
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CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA
HON'BLE MR. JUSTICE AFTAB ALAM

For Petitioner(s) Mr. S.B. Upadhyay, Sr. Adv.
Mr. Pawan Upadhyay, Adv.
Mr. Ashish Bansal, Adv.
Ms. Sharmila Upadhyay, Adv.

Mr. S. Ganesh, Sr. Adv.
Mr. Pratap Venugopal, Adv.
Ms. Deepti, Adv.
Mr. Purushottam Kumar Jha, Adv.
for M/s. K.J. John & Co., Adv.

Ms. Kirti Mishra, Adv.

Ms. Nisha Bagchi, Adv.

Ms. B. Sunita Rao, Adv.

Mr. Anupam Srivastava, Adv.

Mr. Soli J. Sorabjee, Sr. Adv.

Mr. Neeraj Kumar Jain, AAG, Haryana.

Mr. Anoop G. Chaudhari, Sr. Adv.

Ms. June Chaudhari, Sr. Adv.

Mr. M.K. Datta, Adv.

Mr. Prabhat Kumar Rai, Adv.

Mr. Sandeep Chaturvedi, Adv.

Mr. Naresh Bakshi, Adv.

Mr. B.B. Singh, Adv.

Mr. S.K. Bagaria, Sr. Adv.

Mr. Sanand R., Adv.

Mr. Rajeev Mishra, Adv.

Mr. Parmanand Pandey, Adv.

Mr. Kamal Mohan Gupta, Adv.

Mr. Dharmendra Kumar Sinha, Adv.

...3/-

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For Respondent(s) Mr. P.P. Rao, Sr. Adv.

Mr. Shyam Divan, Sr. Adv.

Mr. C.D. Singh, Adv.

Mr. Sunny Chowdhary, Adv.

Mr. Adiya Singh, Adv.

Mr. Vairagya Vardhan Dubey, Adv.

Ms. Upasana Nath, Adv.

Dr. Debi Pal, Sr. Adv.

Mr. M.P. Jena, Adv.

Mr. Ankur Saigal, Adv.

Ms. Bina Gupta, Adv.

Mr. Gaurav Singh, Adv.

Mr. A. Majumdar, Adv.

Mr. Dhruv Agarwal, Sr. Adv.

Mr. Praveen Kumar, Adv.

Dr. Devi Pal, Sr. Adv.

Mr. Ranjit Kumar, Sr. Adv.

Mr. Sunil Kumar Jain, Adv.

Mr. Bibek Mohanti, Adv.

Mr. Aneesh Mittal, Adv.

Mr. Farrukh Rasheed, Adv.

Mr. M. Paikaray, Adv.

Mr. V.N. Raghupathy, Adv.

Mr. Shanti Bhushan, Sr. Adv.

Mr. Ejaz Maqbool, Adv.

Ms. Taruna Singh, Adv.

Mr. Rajesh Jain, Adv.

Ms. Garima Kapoor, Adv.

Mr. Faraz Khan, Adv.

Mr. Shibashish Misra, Adv.

Mr. U.A. Rana, Adv.

Mr. Abhishek Rao, Adv.
for M/s. Gagrath & Co., Advs.

Ms. Indra Sawhney, Adv.

Mr. Lakshmi Raman Singh, Adv.

Mr. Pranab Kumar Mullick, Adv.
...4/-

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Mr. Janaranjan Das, Adv.
Mr. Swetaketu Mishra, Adv.
Mr. P.P. Nayak, Adv.

Ms. Kanchan Kaur Dhodi, Adv.

Mr. Dayan Krishnan, Adv.
Mr. Gautam Narayan, Adv.
Mr. Nikhil Nayyar, Adv.
Mr. T.V.S. Raghavendra Sreyas, Adv.
Mr. Ambuj Agrawal, Adv.

Ms. Manjula Gupta, adv.

Mr. V.K. Sidharthan, Adv.

Mr. Shambhu Prasad Singh, Adv.
Ms. Punam Kumari, Adv.

Mr. Ashok Panigrahi, Adv.
Mr. Satya Mitra Garg, Adv.

Mr. Milind Kumar, Adv.

Mr. Shambhu Prasad Singh, Adv.
Ms. Manjula Gupta, Adv.
Mr. Prem Sunder Jha, Adv.
Mr. Prashant Jha, Adv.

Mr. Anil K. Kher, Sr. Adv.
Mr. Bhargava V. Desai, Adv.
Mr. Rahul Gupta, Adv.
Mr. Nikhil Sharma, Adv.

Ms. Kiran Suri, Adv.

Ms. K.V. Bharathi Upadhyaya, Adv.

Mr. Siddhartha Chowdhury, Adv.

Mr. Rameshwar Prasad Goyal, Adv.

Mr. Ajay Aggarwal, Adv.
Ms. Kanika Gomber, Adv.
Mr. Rajan Narain, Adv.

Mr. S. Ravi Shankar, Adv.
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Mr. Soli J. Sorabjee, Sr. Adv.
Mr. Ng. J.R. Luwang, Adv.
Ms. Monali Dutta, Adv.
for M/s. Corporate Law Group, Advs.

Mr. Abhijat P. Medh, Adv.

Ms. Manali Singhal, Adv.
Mr. Santos Sachin, Adv.

Mr. Gopal Subramaniam, SG.
Mr. Ashok Parija, Sr. Adv.
Mr. Puneet Bali, Adv.
Mr. Rohit Sharma, Adv.
Mr. Gaurav Kejriwal, Adv.

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

I.A. No.5 in S.L.P. (C) No.14828 of 2008:

The interlocutory application is allowed in terms of prayer clause (i), which reads as under:

modify the Order dated 15.09.2008 passed by this Hon'ble Court in SLP (C) No.14828/2008 and other batch of petitions to the extent of deleting the words 'the Department/State Government undertakes to refund the taxes paid from today with interest, the rate whereof will be fixed by this Court at the time of final hearing and disposal of the Special Leave Petitions'.

The above order dated 15th September, 2008, is re-called, subject to clarification that in case the State of Madhya Pradesh loses at the final hearing, it shall refund the amount(s) deposited with interest at the rate which may be fixed by this Court at the time of final hearing of the matter.

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I.A. No.1 in S.L.P. (C) No.10936 of 2008:

De-link the special leave petition from S.L.P. (C) No.6831 of 2008.
The interlocutory application is, accordingly, disposed of.

I.A. Nos.327-651 in S.L.P.(C) No.14454-14778/ 2008:

Pending further orders, there shall be stay of the impugned judgement till further orders in terms of prayer clause (a) to the extent held in para 13, which reads as under:

The State has no jurisdiction to impose tax on such goods imported from outside and are not manufactured within the State of Orissa. Therefore, the opposite parties may make scrutiny of the same and not realize entry tax on such goods .

In the meantime, this group of Orissa matters is adjourned for a period of three weeks. It is made clear that the State will submit the cut-off date for the simple reason that this Court intends to record that each and every assessee in this group of cases shall pay the outstanding amount, as of cut-off date, in instalments within the time fixed by this Court. Secondly, it is also made clear that, if the State ultimately loses, it shall refund the amount with interest which shall be fixed by this Court at the time of final hearing of these matters. However, each and every assessee in this group of cases shall undertake to pay the outstanding amount in instalments with the current

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liability that may accrue, pending disposal of these special leave petitions. It is further made clear that the assessee in this group of cases will have to deposit the outstanding taxes without penalty.

Till the next date of hearing, no recovery for the time being.

I.A. No.1 in S.L.P. (C) No.15090 of 2009:

The interlocutory application is dismissed as not pressed.

I.A. No.3 in S.L.P. (C) No.26813 of 2008, I.A. No.6 in Civil Appeal No.4715 of 2008 and I.A. No.0.8 in Civil Appeal No.3453 of 2002:

I.A. No.3 in S.L.P. (C) No.26813 of 2008 and I.A. No.6 in Civil Appeal No.4715 of 2008 are filed by the State of Haryana and I.A. No.8 in Civil Appeal No.3453 of 2002 is filed by the assessee.

It is pointed out that the levy of Entry tax has been struck down by the Punjab and Haryana High Court. In the circumstances, as of today, we cannot direct the assesseees to pay the taxes under the Act, which is held to be un-constitutional. However, each and every assessee in this group of cases will file its Returns within a period of four weeks from today. The Assessing Officer will vet the Returns and pass assessment orders in accordance with law. However, there will be no recovery of tax till further orders of this Court,
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subject to each and every assessee in this group of cases giving an undertaking to the State and to this Court that, in the event of their ultimately losing the matter, they shall pay the amount due with interest at the rate that may be fixed by this Court at the time of final hearing of the matters. The said undertaking will be given within four weeks. It is also made clear that, in cases where assessments have been completed, may be under the Act which has been struck down by the High Court, it would be open to the assesseees to consider filing of appeals before the Appellate Authority, if so advised, but, if they choose to file the same, it shall be done within six weeks from today. If an appeal is filed, the Appellate Authority will not insist upon making pre-deposit. The idea behind this order is that the Court would like to know the amount(s) due.

I.A. No.2 in S.L.P. (C) No.15723 of 2009:

Stand over for four weeks in order to enable the applicant to file balance-sheets, financial statements and Auditor's certificate by way of an affidavit saying that the burden has not been passed by Steel Authority of India Limited [SAIL] to its customers. The Court would like to know whether there is a Note attached to the financial statements in that regard.

I.A. No.3 in S.L.P. (C) No.14949 of 2009:

This interlocutory application is filed by Gammon India Limited. Learned counsel appearing on
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behalf of the assessee states that the outstanding amount, as of date, is approximately Rupee s two crores. He further states that the assessee is ready and willing to deposit the said amount without prejudice to its rights and contentions before the Assessing Officer within four weeks from today. The assessee also states that, within the same period, it shall file Returns under the Entry Tax Act. The Assessing Officer will assess and pass assessment orders in accordance with law. However, no steps will be taken by the Department to recover the amount until further orders. It is made clear that, in case this amount of Rupees two crores is required to be refunded to the assessee consequent upon the judgement of this Court in the pending special leave petition, the State shall refund this amount with interest, which may be fixed by this Court at the time of final hearing of the matter. Subject to the assessee depositing Rupees two crores within the time limited prescribed, on deposit, the road permit(s) shall be granted to it in accordance with law.

The interlocutory application is, accordingly, disposed of.

[T.I. Rajput][Madhu Saxena]
A.R.-cum-P.S. Court Master