ITEM NO.20 COURT NO.8 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).7530/2012

(From the judgement and order dated 23/12/2011 in WT No.1149/2008 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

M/S SIMPLEX INFRAS.LTD.TR.DIR. Petitioner(s)

VERSUS

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

(With appln(s) for exemption from filing c/c of the impugned Judgment and prayer for interim relief and office report)

Date: 07/05/2012 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. M.A. Rahman, Adv.
Mr. Kazmi Sher, Adv.
Mr. Moinuddin Auran, Adv.
Mr. Vipin Kumar Jai,Adv.

For Respondent(s) Mr. Gunnam Venkateswara Rao,Adv.

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

Delay condoned.

Notice to the respondents.

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

Leave granted.

In this Civil Appeal, the appellant is questioning the correctness or otherwise of the common judgment and order dated 23.12.2011 passed by the High Court of Judicature at Allahabad in Writ-Tax No.1149 of 2008.

In the Writ Petition filed, the appellant 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 :

I. 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(s) for the balance amount(s) 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 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.

II. The appellant shall also deposit 50% of the tax liability/arrears, including interest and penalty, and furnish bank guarantee(s) for the balance amount(s) as and when demand notices are issued under the U.P.Act, 2007 for the past period.

III. In default, the interim order(s) granted by this Court shall automatically stands vacated.

IV. In case the State of Uttar Pradesh loses the matters at the time of final hearing, it shall refund to the appellant the amount(s) deposited with interest at the rate which may be fixed by this Court.

V. 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.

VI. The appellant shall continue to pay the tax at the prevailing rate(s) for the future period as applicable to each one of the assessees.

VII. 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.

VIII. The interim order(s) passed by us will apply to only those cases where the appellant has filed the affidavits before this Court pursuant to the orders passed by us on 05.01.2012.

IX. If for any reason, the appellant wants 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.

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

XI. 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 appellant in this case has passed on the tax burden on the consumers.

(Naveen Kumar)
Court Master

(Sharda Kapoor)
Court Master