SECTION -III

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

PETITION FOR SPECIAL LEAVE TO APPEAL (C) CC No. 18883 OF 2016
WITH
INTERLOCUTORY APPLICATION NO.1
(Application for Condonation of Delay in filing the SLP)

State of U.P. & Others .....Petitioners

Versus

Bharti Airtel Limited & Another ....Respondents

OFFICE REPORT

The matter above-mentioned has been filed by Mr. R.P. Mehrotra, Advocate on behalf of the Petitioner against the Judgment and Final Order dated 27th October 2015 of the High Court of Judicature at Allahabad in civil Misc. Writ Petition (Tax) No.777 of 2015. There is delay of 196 days in filing the special leave petition.

It is submitted that Civil Appeal No.848 of 2012 @ SLP (Civil) No.196 of 2012 referred to on Page 'B' of List of Dates was listed before the Hon'ble Court on 17th January 2012 alongwith connected matters, when the Court was pleased to grant leave. The said matter is pending for hearing. A copy of Record of Proceedings dated 17th January 2012 is enclosed herewith for kind perusal of the Hon'ble Court.

It is further submitted that Counsel for the Petitioner has on .....filed additional documents as per undertaking dated 28th September 2016. Copies of Additional documents have been included in paper books.

The matter alongwith application above-mentioned is listed before the Hon’ble Court with this Office Report

Dated this the ...th Day of October, 2016.

ASSISTANT REGISTRAR

Copy to:

Mr. R. P. Mehrotra, Advocate
100, Old Lawyrs Chambers.

ASSISTANT REGISTRAR

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ITEM NO.3 COURT NO.11 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).196/2012
(From the judgement and order dated 23/12/2011 in CMWP No.1482/2007 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

MOSER BEER INDIA LTD. Petitioner(s)

VERSUS

STATE OF U.P. & ORS. Respondent(s)
(With prayer for interim relief and office report)

with

SLP (C) No. 324-326/2012
(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. 327/2012
(with appln. (s) for exemption from filing c/c of the impugned judgment and with prayer for interim relief and office report)

Date: 17/01/2012 These Petitions were called on for hearing today.

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

For Petitioner(s)
in SLP © 196/12 Mr. Dhruv Agarwal, Sr. Adv.
Mr. Manoj Saxena,Adv.
Mr. Shwetank Sailakwal,Adv.
Mr. Nishit Agarwal,Adv.
Mr. Vipin Kumar Jai,Adv.

in SLP © 324-326/12 Mr. R.F. Nariman, Ld. SG

Mr. Bharatji Aggarwal,Sr. Adv.
Mr. Gireish Khandpal,Adv.
Mr. Sanjiv Kumar Saxena,Adv.
Mr. Ghanshyam Joshi,Adv.

in SLP © 327/12 Mr. R.F. Nariman, Sr. Adv.
Mr. Bharatji Aggarwal,Sr. Adv.
Mr. A Mariaputham,Sr.Adv.
Mr. V.N. Koura,Adv.
Mr. Paramjeet Beripal,Adv.
Ms. Aruna Mathur,Adv.
Mr. Yusuf Khan,Adv.
M/s. Arputham, Aruna & Co.

For Respondent(s) Mr. K.K. Venugopal,Sr.Adv.
Mr. Sunil Gupta,Sr.Adv.
Mr. Sail Kr. Dwivedi,Addl.AG
Mr. S.P. Kesarwani,Addl.CSC
Mr. Gunnam Venkateswara Rao,Adv.
Mr. Manoj Dwivedi,Adv.
Mr. Aviral Shukla,Adv.
Mr. Rohit Bhatt,Adv.

UPON hearing counsel the Court made the following

O R D E R

SLP (C) No. 327/12 [Indian OIL CORP. LTD. & ANR. VS. STATE OF U.P. & ORS.]

The Respondent/State has levied Entry Tax on import of crude oil into the State under the provisions of U.P. Tax on Entry of Goods into Local Areas Act, 2007 (hereinafter referred as `U.P. Act, 2007'), the vires of which has been upheld by the Division Bench of the High Court of Judicature of Allahabad vide its order dated 23.12.2011 in Writ Tax No. 1483 of 2007 and connected matters. Several assessees have approached this Court being aggrieved by the orders passed by the Allahabad High Court in the aforesaid writ petitions. While considering the request made by some of the petitioners/assesses, we have passed conditional interim orders dated 10.1.2012 and 13.1.2012.

On a request made by learned Solicitor General, we had separated these special petitions, though they were posted before the Court on the previous dates of hearing. While doing so, after hearing Shri R.F.Nariman, learned Solicitor General, appearing for the petitioners, we had passed the following Order :

"Shri R.F.Nariman, learned Solicitor General, appearing for the Petitioner in this matter, would contend that the respondents have issued demand notices, inter alia, demanding the payment of Entry Tax under the provisions of U.P. Tax on Entry of Goods Into Local Areas Act, 2007 for the assessment periods 2007--2008, 2008--2009, 2009--2010 and 2010--2011, without there being any quantification by way of assessments for all these years.

Faced with this situation, learned senior counsel, Sh. K.K. Venugopal, appearing for the respondent--State would submit that he will file an appropriate affidavit indicating whether the petitioners herein have filed the monthly or

annual returns for the assessment years in question and whether the department has completed assessments or the basis on which the demand notices are issued. To facilitate them to file the said affidavit, we adjourn this matter to Thursday i.e. 12.01.2012."

On the last date of hearing, learned senior counsel appearing for the petitioners had submitted before us that there was no basis for the State to issue demand notices for the assessment years 2008--2009, 2009--2010 and 2011--2012.

According to the learned senior counsel, the State and its authorities have not even quantified tax liability by way of assessments for all these years.

Taking that into consideration, we had requested Shri K.K. Venugopal, learned senior counsel, appearing for the respondent/State to inform us the basis on which the demand notices have been issued to the assessees for the aforesaid assessment years.

The State has now filed affidavit dated l1th January, 2012 and additional affidavit dated 16th January, 2012, and in the said affidavits they have frankly admitted that for the period prior to 2007--2008, orders of assessment have been completed and the demand notices have been issued. Therefore, the contention of the learned Solicitor General that there was no basis for issuing demand notices;

demanding taxes for the aforesaid period, has no merit. In so far as the assessment for the period of 2008--2009, 2009--2010 and 2010--2011 is concerned, the State has admitted that the assessees, for the aforesaid period, have filed monthly returns but have not accepted the liability to pay the entry tax on the import of crude oil. It is also stated that the assessing authority has issued a pre--assessment notice under Section 9(4) of the U.P.Act, 2007. It is also brought to our notice at the time of hearing of this petition that on the request, made by the assessee, the matter now stands adjourned for the years 2008--2009, 2009--2010 to 23 January, 2012 and for the assessment year 2011--2012, is adjourned to 3O January, 2012. A reading of the affidavit, so filed by the respondent--State, would indicate that for the aforesaid period, quantification of the tax liability is yet to be determined, and therefore, it may not be permissible for the State to issue any demand notices demanding tax from the assessees for the aforesaid assessment years. However, it is now open to the State and its authorities to quantify the tax lia1ibity, either based on the returns filed by the assessee or on the basis of best assessment order, if they so desire, and if the Act so permits for the assessment years 2008--2009, 2009--2010 and 2010--2011. After such quantification, the State is at liberty to issue appropriate demand notices.

Learned Solicitor General, Shri R.F.Nariman, submits that the assessees stand unique in its own way and the assesse should not be treated like any other assessee(s). We are not inclined to accept the request of the learned Solicitor General. We say so for the reason that all the dealers under the Act, unless they are exempted from payment of tax under the Act, should be treated equally and further, the uniformity even while passing the interim orders is the hallmark of this justification. Therefore, the assessee is also a dealer under the Act and the said assessee is to be treated in the same manner as has been done in the case of the other assesses under the Act.

Learned Solicitor General, Shri R.F.Nariman has also brought to our notice the orders passed by this Court in the case of Bongaigaon Refinery & Petrochemical Ltd [Now Indian Oil Corporation Limited] vs. State of Assam & Ors., wherein this Court has granted an interim stay of the demand notices issued by the assessing authority by directing the assessee to deposit twenty five per cent of the outstanding amount and then has modified it by increasing the deposit to be made approximately to thirty three per cent.

At this stage, we only to say that the interim Order(s) are not precedents. It can be modified/varied in the facts and circumstances of each case.

Lastly, learned Solicitor General submits that the assessee has not filed his monthly return for some of the months for the assessment years of 2008--2009, 2009--2010 and 2010--2011. If that is so, the assessee is permitted now to file their monthly returns for the assessment years of 2008--2009, 2009--2010 and 2010--2011 in four weeks time from today. After the expiry of such period, the assessing authority is directed to complete the assessment(s) for the aforesaid period and issue demand notices, accordingly.

The petitioner is also granted six weeks' time thereafter for complying with the demand notice(s) issued by the assessing authority in accordance with the orders passed by us on 10th January, 2012 and 13th January, 2012 in M/s.Vikram Cement vs. State of U.P. & Ors. in Special Leave Petition (Civil) No. 33/2012.

Ordered accordingly.

SLP (C) No. 324--326/2012 [GAIL (INDIA) LTD. & ANR. VS. STATE OF UP. & ORS]

Learned Solicitor General, Shri R.F.Nariman, has produced the details of Entry Tax assessed and demands pending for the assessment years 2000--2001 to 2009--2010. On instructions, he submits that the petitioners herein have paid substantial amount by way of Entry Tax to the Department. It is also his case that what now requires to be paid is approximately 100 crores only.

It is also brought to our notice that for the assessment years 2000--2001 to 2009--2010, the petitioners have filed appeals/revisions before the High Court/statutory authorities and those appeals are pending for consideration. Now, a request is made that the petitioners should be permitted to make an application/petition for grant of ad--interim stay of the demand notices issued by the respondents --State for the assessment years 2000--2001 to 2009--2010.

Shri K.K. Venugopal, learned senior counsel appearing for the State opposes the request made by the learned Solicitor General, Shri R.F.Nariman.

Taking into consideration respective contentions canvassed by the learned counsel for the parties, we are of the view that the request of the learned Solicitor General is reasonable and requires to be accepted since it is not causing any prejudice to the department. Accordingly, we grant liberty to the petitioners/assessees to make appropriate application/petition before the appellate authorities/revisional authorities/High Court within four weeks' time from today. If such an application is filed within the time granted by this Court, the appellate authority/ revisional authority/High Court will consider the same in accordance with law within four weeks thereafter.

Shri Sunil Gupta, learned senior counsel appearing for the State, on instructions would submit that the respondents shall not resort to any recovery proceedings against the

petitioners till the disposal of the applications/petitions filed by the assessee. The same is placed on record.

SLP (C) No. 196/2012 [Moser Beer India Ltd. vs. STATE OF U.P. & ORS.]

Notice to the respondents.

Learned counsel appears and accepts notice on behalf of all 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 of Allahabad in Writ Tax No.1482 of 2007 etc. dated 23.12.2011.

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 appellant. Accordingly, we pass the following order:

The operation of the impugned judgment and order is stayed subject to the appellant 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 Petition before the High Court. The appellant is 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 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 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 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 to each 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.

If for any reason, the appellant in this appeal 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.

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.

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.

(N.K. Goel)	(SHARDA KAPOOR)
Court Master	Court Master