

SUPREME COURT TODAY'S LARGER BENCH RULING IN HONGO INDIA : HELD DELAY CONDONATION IN FILING REFERENCE/APEAL TO HIGH COURT BY REFERENCE TO LIMITATION ACT NOT ALLOWED WHEN PARENT ACT IMPLIEDLY EXCLUDES LIMITATION ACT

ALSO FIND ENCLOSED SUPREME COURT'S RULING IN RAJIV GUPTA ON STAY OF TAX DEMAND IN CONTEXT OF DELHI SALES TAX ACT HELD AS UNDER:

7. *The first proviso consists of two parts. In a given case the appeals can be entertained by the Tribunal, for reasons to be recorded in writing, without insisting on payment of tax and penalty as the case may be, of the penalty on the appellant furnishing security in the prescribed manner for such amount as it may direct. The other category which is applicable to the present case relates to direction for deposit of smaller sum with or without security for such amount of tax or penalty which remains unpaid, as it may direct. In other words, the appellate authority has a discretion not to insist on payment as a condition precedent to entertain the appeal, for which the reasons have to be recorded in writing. **The order in terms of Section 43(5) is essentially an order of stay. Three things are to be considered by the Tribunal while dealing with the application for dispensing with the pre deposit. They are: the prima facie case, balance of convenience and irreparable loss.***
8. *Principles relating to grant of stay pending disposal of the matters before the concerned forums have been considered in several cases. It is to be noted that in such matters though discretion is available, the same has to be exercised judicially.*
9. *The applicable principles have been set out succinctly in Silliguri Municipality and Ors. v. Amalendu Das and Ors. (AIR 1984 SC 653), M/s Samarias Trading Co. Pvt. Ltd. v. S. Samuel and Ors. (AIR 1985 SC 61) and Assistant Collector of Central Excise v. Dunlop India Ltd. (AIR 1985 SC 330).*
10. *It is true that on merely establishing a prima facie case, interim order of protection should not be passed. But if on a cursory glance it appears that the demand raised has no leg to stand, it would be undesirable to require the assessee to pay full or substantive part of the demand. Petitions for stay should not be disposed of in a routine matter unmindful of the consequences flowing from the order requiring the assessee to deposit full or part of the demand. There can be no rule of universal application in such matters and the order has to be passed keeping in view the factual scenario involved. Merely because this Court has indicated the principles that does

not give a license to the forum/authority to pass an order which cannot be sustained on the touchstone of fairness, legality and public interest. Where denial of interim relief may lead to public mischief, grave irreparable private injury or shake a citizens' faith in the impartiality of public administration, interim relief can be given."*