

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11429 OF 2013

Hindalco Industries Ltd.	}	Petitioner
versus		
The Union of India and Ors.	}	Respondents

Mr. V. Sridharan-Senior Advocate with Mr.
Prakash Shah and Mr. Jas Sanghavi i/b.
M/s. PDS Legal for the Petitioner.

Mr. Pradeep S. Jetly for the Respondents.

**CORAM :- S.C.DHARMADHIKARI &
S.P.DESHMUKH, JJ.**

DATED :- JANUARY 5, 2015

P.C. :-

The present Writ Petition is filed for the following reliefs:

“(a) this Hon'ble Court be pleased to issue writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, ordering and directing the Respondents, their subordinate servants and agents to forthwith to take all steps and proceedings under the Act and sanction the refund of Rs.4,96,82,615 [Rs.4,07,01,325 (amount encashed) + Rs.89,72,240 (cash deposited)] along with appropriate interest and return the bank guarantee No.BRC/DBD/2008-09 dated 05.02.2009 duly cancelled to the Petitioners in view of the order No. A/47/2005 – WZB/C-II dated 31.12.2004 passed by Appellate Tribunal;

(b) that pending the hearing and final disposal of this Petition, the Respondents by themselves, their officers, subordinates, servants and agents be directed by interim order and injunction of this Hon'ble Court to forthwith deposit the said sum of Rs.4,96,82,615/- [Rs.4,07,01,325/- (amount encashed)] + Rs.89,72,240/- (cash deposited) along with appropriate interest with a liberty to withdraw the same on such terms and conditions as this Hon'ble Court may deem fit and proper;
.....”

2) The jurisdiction of this Court under Article 226 of the Constitution of India is invoked by the Petitioner/Assessee because it is aggrieved by the fact that though a refund claim has been sanctioned in its favour by the Tribunal way back on 31st December, 2004, the amounts have not been remitted in terms of this order to the Assessee for all these years.

3) A writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction is prayed to direct the Respondents/Revenue to forthwith refund the amounts in terms of the Tribunal's order and further under a Bank Guarantee, which was encashed by the Revenue. The details of all these have been set out in the Writ Petition. There is no dispute with regard thereto.

4) The only contention raised before us by Mr. Jetly appearing for the Revenue is that against the final order of the Tribunal dated 31st December, 2004, copy of which is at Annexure 'D' to the Writ Petition, an Appeal has been filed by the Revenue in the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India has admitted the Appeal on 18th April, 2005. Relying upon a principle that once the order is under Appeal, it becomes vulnerable and therefore no effect can be given to it during the pendency of the Appeal before the highest Court, nothing has been brought on record by Mr. Jetly. He fairly submits that

there is no specific interim order or interim stay in favour of the Revenue by the Hon'ble Supreme Court of India till date.

5) Mr. Jetly alternatively therefore prays for three month's time so as to enable the Revenue to apply for an interim order/stay in the pending Appeal before the Hon'ble Supreme Court of India. This request is opposed by the Petitioner and it points out that the Writ Petition is pending from 27th November, 2013 and all this period was enough to apply to the Hon'ble Supreme Court.

6) After hearing both sides, we are of the view that the interest of justice would be served if we pass the following order:

(a) We accept the statement of Mr. Jetly and grant three month's time to the Revenue to apply to the Hon'ble Supreme Court for interim stay in the pending Appeal.

(b) In the event no such application is made or if made by the revenue is rejected, the Revenue shall forthwith thereafter refund the amounts in terms of prayer clause (a) to the Petitioner.

(c) The amounts under the refund claim sanctioned as also in terms of the Bank Guarantee shall be refunded to the Petitioners.

(d) Needless to clarify that this order or direction does not preclude the Petitioner from raising their claim for interest on belated payment or otherwise permitted by statute. Keeping open that claim, we dispose of this Writ Petition.

7) All concerned to act upon an authenticated copy of this order.

(S.P.DESHMUKH, J.)

(S.C.DHARMADHIKARI, J.)