



"... dismissed on merits and default for not submitting a Bank Guarantee which was a pre-condition for hearing the appeal...."

We find that the appeal of Messrs. Wadiawala Trading & Co. was heard and dismissed on merits and the appeal of the petitioners was not considered on merits because their contention was that the petitioners could not have been equated with the other parties. That question is not considered and the petitioners' matter is not decided on merits.

The petitioners were directed by way of a precondition to furnish a bank guarantee of Rs.1,00,000.00 by the order dated 31st October, 1995. Since that order was not complied with, the appeal has been dismissed for non-compliance. When we issued notice in this petition, we had directed the petitioners to deposit a sum of Rs.2,00,000/- in this Court and it has been so done.

In view of that deposit, it is directed that the petitioners' appeal be restored and be heard on merits in accordance with law and this amount of Rs.2,00,000/- be treated as pre-deposit for hearing of the appeal.

The Office is directed to pay the amount of Rs.2,00,000.00 deposited in this Court by an account payee cheque to respondent No.1 and the cheque to be handed over to the Standing Counsel representing respondent No.1.

In view of this, the impugned order dated 26th May, 1997 so far as the present petitioners are concerned is set aside and this appeal is remanded to the 1st respondent for disposal in accordance with law.

Rule is made absolute accordingly.

\*\*\*\*\*

(apj)