

M/S. CANON STEELS P. LTD.
v.
COMMISSIONER OF CUSTOMS

NOVEMBER 12, 2007

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

*Customs Act, 1962; Section 130/Constitution of India, 1950;
Article 227:*

Territorial jurisdiction of High Court—Cause of action not arises within—Discretionary jurisdiction—Invoking of—Held: When a part of cause of action arises within territorial jurisdiction of one or the other High Court, it will be for the petitioner to choose any one of them—However, merely because part of cause of action arises within territorial jurisdiction of High Court, that by itself may not be a determinative factor compelling the High Court to decide the matter on merit—High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of Forum Conveniens—In the instant case, Punjab and Haryana High Court justified in dismissing the appeal on ground that both the adjudication order and the appellate order not issued by any authority within its territorial jurisdiction—Delhi High Court has jurisdiction to deal with the matter.

Doctrines:

Doctrine of 'Forum Conveniens.'—Invoking of

The question which arose for determination in this appeal was as to whether the Punjab & Haryana High Court had jurisdiction to deal with the matter in which the original order was passed by Adjudicating authority at Mumbai and the appellate order was passed at Delhi by the Customs, Excise and Service Tax Appellate Tribunal in an appeal filed u/s.130 of the Customs Act, 1962.

Appellant-assessee contended that the judgment in *Kusum*

- A *Ingots & Alloys Ltd. v. Union of India and Anr.*, is in its favour and on misreading of the decision the appeal has been dismissed by the High Court; that *prima facie*, the High Court was of the view that the appeal was not maintainable before it and, therefore, the appellant withdrew the said appeal to file it before the appropriate High Court;
- B that since the cause of action arose at Chandigarh, Punjab and Haryana High Court has jurisdiction; and that the situs of framing law or rule would give jurisdiction to the Delhi High Court.

C Respondent submitted that before moving the Punjab and Haryana High Court, the Delhi High Court was moved, and at the request of the appellant, the High Court permitted to withdraw the appeal.

Disposing of the appeal, the Court

D HELD: 1.1. The Court must have the requisite territorial jurisdiction. An order passed on a writ petition questioning the constitutionality of a Parliamentary Act, whether interim or final keeping in view the provisions contained in clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act.

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[Para 6] [1056-F, G]

F 1.2. The decision of this Court in the case of *Nasiruddin v. STAT* is an authority for the proposition that the place from where an appellate order or a revisional order is passed may give rise to a part of cause of action although the original order was at a place outside the said area. When a part of the cause of action arises within one or the other High Court, it will be for the petitioner to choose his forum. [Para 8] [1058-B, C]

Nasiruddin v. STAT, [1975] 2 SCC 671, referred to.

G 1.3. Even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the

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doctrine of forum conveniens. [Para 9] [1058-C, D]

Bhagat Singh Bugga v. Dewan Jagbir Sawhney, AIR (1941) Cal 670; *Madanlal Jalan v. Madanial*, AIR (1949) Cal 495; *Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd.*, (1997) CWN 122; *S.S. Jain & Co. v. Union of India*, (1994) 1 CHN 445 and *New Horizons Ltd. v. Union of India*, AIR (1994) Del 126, referred to.

1.4. The appellate order in this case was issued from CESTAT office at New Delhi. In that sense the Delhi High Court has jurisdiction to deal with the matter. [Para 10] [1058-E, F]

Kusum Ingots & Alloys Ltd. v. Union of India and Anr., [2004] 6 SCC 254, referred to.

1.5. The Punjab & Haryana High Court was justified in its view as the original adjudication order and the appellate orders were not issued by any authority within its territorial jurisdiction. But no person should be left without a remedy, therefore, even though the case was withdrawn by the assessee, the same is restored as the Delhi High Court has jurisdiction to deal with the matter.

[Para 11] [1058-F, G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5153 of 2007.

From the final Judgment and Order dated 8.5.2006 of the High Court of Punjab and Haryana at Chandigarh in Customs Act Appeal No. 4 of 2004.

S.R. Sharma and S. Balaji for the Appellant.

B. Krishna Prasad for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the orders passed by the Punjab & Haryana High Court dismissing the Customs Act Appeal No. 4/2004, filed under Section 130 of the Customs Act, 1962 (in short the 'Act')

- A dated 8th May, 2006, and the order passed in review application dated 12.10.2006. The High Court held that it had no jurisdiction to deal with the matter as the original order was passed by Adjudicating authority at Mumbai and the appellate order was passed at Delhi by the Customs, Excise and Service Tax Appellate Tribunal (in short 'CESTAT').
- B Reference was made to the decision of this Court in *Kusum Ingots & Alloys Ltd. v. Union of India and Anr.*, [2004] 6 SCC 254.

3. In support of the appeal, learned counsel for the appellant submitted that the judgment in *Kusum Ingots* (supra) is in favour of the appellant and on misreading of the decision the appeal has been dismissed.

C Learned Additional Solicitor General, on the other hand, submitted that before moving the Punjab and Haryana High Court, the Delhi High Court was moved, and at the request of the appellant, the High Court permitted to withdraw the appeal (wrongly stated as writ petition).

D 4. The factual position is not in dispute. The adjudication order under the Act was passed by the Commissioner of Customs (EP Mumbai) and the appeal against that order was adjudicated by CESTAT. Against the order of CESTAT, Customs Appeal No.6/04 was filed before the Delhi High Court. It is submitted by learned counsel for the appellant that *prima*

E *facie*, the High Court was of the view that the appeal was not maintainable before it and, therefore, the appellant withdrew the said appeal to file it before the appropriate High Court. Since the cause of action arose at Chandigarh it was submitted that the Punjab and Haryana High Court has jurisdiction.

F 5. At this juncture, it would be appropriate to take note of what has been stated by this Court in *Kusum Ingots* (supra).

6. The Court must have the requisite territorial jurisdiction. An order passed on a writ petition questioning the constitutionality of a

G Parliamentary Act, whether interim or final keeping in view the provisions contained in clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act.

H 7. Learned counsel for the appellant in support of his argument

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would contend that the situs of framing law or rule would give jurisdiction A
to the Delhi High Court and in support of the said contention relied upon
the decisions of this Court in *Nasiruddin v. STAT* [1975] 2 SCC 671,
and *U.P. Rashtriya Chini Mill Adhikari Parishad v. State of U.P.*,
[1995] 4 SCC 738. So far as the decision of this Court in *Nasiruddin's* B
case (supra) is concerned, it is not an authority for the proposition that
the situs of legislature of a State or the authority in power to make
subordinate legislation or issue a notification would confer power or
jurisdiction on the High Court or a Bench of the High Court to entertain
a petition under Article 226 of the Constitution. In fact, this Court while
construing the provisions of the United Provinces High Courts C
(Amalgamation) Order, 1948 stated the law thus: (SCC p. 683, para
37)

“37. The conclusion as well as the reasoning of the High Court is
incorrect. It is unsound because the expression ‘cause of action’ D
in an application under Article 226 would be as the expression is
understood and if the cause of action arose because of the appellate
order or the revisional order which came to be passed at Lucknow
then Lucknow would have jurisdiction though the original order was
passed at a place outside the areas in Oudh. It may be that the
original order was in favour of the person applying for a writ. E
In such case an adverse appellate order might be the cause of action.
The expression ‘cause of action’ is well known. If the cause of
action arises wholly or in part at a place within the specified Oudh
areas, the Lucknow Bench will have jurisdiction. If the cause of
action arises wholly within the specified Oudh areas, it is F
indisputable that the Lucknow Bench would have exclusive
jurisdiction in such a matter. If the cause of action arises in part
within the specified areas in Oudh it would be open to the litigant
who is the *dominus litis* to have his *forum conveniens*. The litigant
has the right to go to a court where part of his cause of action G
arises. In such cases, it is incorrect to say that the litigant chooses
any particular court. The choice is by reason of the jurisdiction of
the court being attracted by part of cause of action arising within
the jurisdiction of the court. Similarly, if the cause of action can be H

A said to have arisen part within specified areas in Oudh and part outside the specified Oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Lucknow. The court will find out in each case whether the jurisdiction of the court is rightly attracted by the alleged cause of action.”

B 8. The said decision is an authority for the proposition that the place from where an appellate order or a revisional order is passed may give rise to a part of cause of action although the original order was at a place outside the said area. When a part of the cause of action arises within one or the other High Court, it will be for the petitioner to choose his forum.

C 9. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. [See *Bhagat Singh Bugga v. Dewan Jagbir Sawhney*, AIR (1941) Cal 670, *Madanlal Jalan v. Madanlal*, AIR (1949) Cal 495, *Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd.*, (1997) CWN 122, *S.S. Jain & Co. v. Union of India*, (1994) 1 CHN 445 and *New Horizons Ltd. v. Union of India*, AIR (1994) Del 126.]

D 10. The appellate order in this case was issued from CESTAT office at New Delhi. In that sense the Delhi High Court has jurisdiction to deal with the matter in terms of what has been stated in paragraph 25 of *Kusum Ingot's case* (supra).

E 11. The Punjab & Haryana High Court was justified in its view as the original adjudication order and the appellate order were not issued by any authority within its territorial jurisdiction. But no person should be left without a remedy, therefore, even though the Customs Case No.6/04 was withdrawn by the assessee, we direct the restoration of the said as undisputably, the Delhi High Court has jurisdiction to deal with the matter.

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12. Customs Case No. 6/04 in the Delhi High Court needless to say shall be dealt with on merits. A

13. We make it clear that we have not expressed any opinion on the merits of the appeal.

14. The appeal is accordingly disposed of without any order as to costs. B

S.K.S.

Appeal disposed of.