(1994) 05 DEL CK 0090

In the Delhi High Court

Case No : Civil Writ Petition No. 3037 of 1993 and Civil Writ Appeal No. 3827 of 1993

J.B. Textile Industries Pvt. Ltd. APPELLANT

Vs

Union of India and Another RESPONDENT

Date of Decision : 01-05-1994

Acts Referred:

Central Excise Rules, 1944 — Rule 230
Constitution of India, 1950 — Article 226, 32

Citation : (1994) 54 DLT 407 : (1994) 30 DRJ 71

Hon'ble Judges : R.C. Lahoti, J;Arun Kumar, J

Bench : Division Bench

Advocate : R.K. Kapur, B.R. Kapur, Madan Lokur and B.R. Kapoor, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) This common order shall govern the disposal of two writ petitions Cw 3037 / 93 and Cw 3872/93. In both the petitions a preliminary objection raised on behalf of the respondents to the maintainability of these petitions before this High Court for want of territorial jurisdiction has been raised.

(2) The facts in brief, in so far as relevant for the purpose of disposing of the question of territorial jurisdiction are as under.

(3) In Cw 3037/93, the petitioner company is situated at Bombay. The petition was filed on 30.6.93. Cw 3037/93 impleading the Union of India, through the Secretary, Ministry of Finance, Department of Central Excise New Delhi only as the sole. respondent .On 23.7.1993, the petitioner was allowed to implead the Collector of Central Excise Bombay as a party respondent to the petition. Thereupon on 27.7.93, the petitioner filed an amended memo of parties impleading the Collector of Central Excise, the Assistant Collector of Central Excise (Enf) and the Asstt Collector Central Excise Div.9, all the three situated at

Bombay. 3.1 The cause of action stated by the petitioner is a raid conducted on 29.5.93 by the officials of the Central Excise on the premises of the petitioner company situated at Bombay. The petitioner No.2, the Managing Director of the company petitioner No.1 apprehended his arrest at any moment. The relief prayed for in the petition was declaration of the provisions of Rule 230 of the Central Excise Rules 1944 as ultra virus the provisions of the Central Excise and Salt Act, 1944. The petitioners also filed an application seeking an ad interim writ, wherein they sought for restraining the respondent authorities from taking any action under the penal provisions of Chapters 2,3, & 4 of the Central Excise and Salt Act and the Rules made there under against the petitioner with respect to the raid, search, detaining of goods at the factory premises of the petitioner company and stay of detention/ arrest of the petitioner and other executive authorities of the company during the pendency of the writ petition. 3.2 A Division Bench of this Court directed notice to show cause against admission to be issued to the respondents as also a notice to show cause against the application for ad interim relief to be issued to the respondents. On 12.7.93, a Division Bench of this Court could be persuaded by the petitioners to pass an order to the effect that the officers of the petitioner company shall not be arrested because of any arrears or dues of excise. 3.3 The petitioner No.2 had also moved the High Court of Bombay for an order of anticipatory bail. In Cri. Application No.2082/93 vide order dated 18.8.93, the High Court of Bombay allowed anticipatory bail to petitioner No.2 subject to certain conditions. It appears that certain goods and/or property of the petitioner company was seized by the officials of the Excise Department at Bombay. The petitioner company filed a writ petition before the High Court of Bombay registered as Cw No.3202/93, which was dismissed on 27.8.93 at the admission stage. The High Court of Bombay passed the following order :-

"No interference at this stage is required inasmuch as adjudication is yet to take place. Adjudication proceedings would be a proper forum to go into disputed question of facts .As far as the question of seizure is concerned, we are of the view that Department has a power to seize. In any view of the matter liberty on fulfillment of certain conditions is given to the petitioners by the Department to have the goods released. For the reasons stated in affidavit filed by the department, we find the conditions reasonable."

34 As against this order the preferred an appeal to the Supreme Court, which was dismissed on 3.12.1993.

(4) Civil Writ3287.93 was filed by M.''S. Bal Krishna Ltd, a company situated at Bombay and having factory premises there by impleading Union of India Collectorate Bombay and the Assistant Collector Div. 10 Bombay as the respondents. The cause of action alleged therein is a show cause against detention notice dated 16.7.93. Annexure P-l whereby in exercise of powers conferred by Rule 230 of the Central Excise Rules, 1940 the excisable goods, etc.of the petitioner company have been detained by the Asstt Collector Central

Excise Bombay. In this petition the company has asked for a declaration that Rule 230 is ultra virus and also setting aside the impugned notice dated 16.7.93 followed by a restraint order to the respondent authorities from resorting to the penalty provisions of Rule 230 against the petitioner company.

(5) In both the petitions, causes of action have arisen at Bombay. Though Union of India has been shown as a party to the petition and ''Rule 230 of the Central Excise Rules has been sought to be declared ultra vires, no relief is sought for against the Union of India inasmuch as no writ is to be issued against it. Part of the cause of action has already arisen at Bombay and part is alleged to arise at Bombay in future. The statutory authorities, namely, the Collector and the Assistant Collector against whom writs are to issue are permanently situated at Bombay. We have a Division Bench decision of this Court available which clinches the issue. ln Shiv Shankerlal Gupta vs Cit BombAy and other Air 1968 Del 295, under orders of the Income Tax Commissioner at Bombay certain premises were searched and documents and cash were seized u/s 312(1) of the Income Tax Act at Bombay. A declaration was sought for that Section 132 of the income Tax Act was ultra vires. The petitions were filed in the Delhi High Court. This Court refused to hold availability of territorial jurisdiction to it inasmuch as the entire cause of action arose outside its jurisdiction. The Central Govt was not a necessary party inasmuch as there was no writ to be issued against it. The Division Bench followed with approval the view expressed by Rajasthan High Court in Sayyed Husan Ali vs Dargah Committee Air 1959 RAJ 117 and held that in so far as challenge to the virus of a Central Act was concerned, the matter could have been heard by issuing notice to the Attorney General and the Advocate General so that if the Union Govt desired to defend the provisions it could be heard, but it was not necessary to implead the Union of India as a party to the main petition.

(6) Article 226 of the Constitution (relevant part thereof) reads as under :- 226(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate- cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, [for the enforcement of any of the rights conferred by part Iii and for any other purpose]. (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Govt or authority or the residence to such person is not within those territories.

(7) Clause (2) was inserted as Clause-1 A by 15th Amendment and it was rename-breed as clause (2) by 42nd Amendment. Prior to the insertion of this clause it was held that the writs issued by the High Courts did not and could not

run beyond the territories in relation to which they exercised jurisdiction. Now, a High Court within the territorial jurisdiction of which the cause of action arises may issue a writ against a person or authority residing within the jurisdiction of another High Court. In the case at hand, the cause of action to the petitioners has arisen within the jurisdiction of Bombay High Court and the authorities against whom the writ would issue are situated within the jurisdiction of that High Court. By impleading Union of India through the Secretary, Ministry of Finance (Central Excise) Delhi,. - the petitioners have tried artificially to create jurisdiction in Delhi High Court.

(8) The learned Standing Counsel for Uoi has rightly pointed out that this attempt of the petitioner has put the respondents to serious inconvenience and there was delay in putting forth defense because the records were all available at Bombay and not at Delhi. In Bhagat Ram Sharma Vs. Union of India (UOI) and Others, , their Lordships of the Supreme Court upheld the order of the Punjab & Haryana High Court declining to grant any relief to the petitioner "inasmuch as no part of the cause of action arose with in the territorial jurisdiction of said High Court under Article 226 of the Constitution."

(9) For the foregoing reasons, it is held that the two petitions are not maintainable before this High Court for want of territorial jurisdiction. Both the petitions are dismissed with costs quantified at Rs. 5000.00 in each case payable by the petitioners to the respondents.

(10) One copy each of the order shall be placed on the record s of the two petitions.

