

(2013) 08 CAL CK 0045
In the Calcutta High Court
Case No : Writ Petition No. 18048 (w) of 2013

Magma Fincorp Limited

APPELLANT

Vs

Assistant Director, Director General of Central Excise
Intelligence and Others

RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 141, 20(c)
Constitution of India, 1950 — Article 14, 226, 226(2)

Citation : (2013) 5 CHN 70 : (2013) 262 CTR 337 : (2014) 35 STR 190

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : J.K. Mittal, Mr. Paritosh Sinha, Mr. Abra Majumdar, Ms. Dolon Dasgupta, Mr. Amitava Mitra and Mr. Snehashis Sen, for the Appellant; Tapas Kumar Hazra, Sandip Kr. Bhattacharyya, P.K. Ghosh for the Respondents No. 4, 5 and 6, Mr. T. Bhanja, R. Bhardwaj, K.K. Maiti for the Respondents No. 3, 7 and 8, for the Respondent

Final Decision : Dismissed

Judgement

Harish Tandon, J.—A preliminary point is taken by the respondent authorities relating to the maintainability of the writ petition before this Court. According to the respondent, the matter relates to an investigation being conducted by the respondent No. 1, the situs whereof is at Kochi in the State of Kerala, therefore, the present writ petition questioning the action taken by the said respondent before this Court is not permissible. It is to be recorded at the very outset that the parties have not addressed the Court on the merit as this Court feels that the preliminary point as raised above should be addressed first.

2. Before proceeding to deal with the above point, the salient features of the facts, which are more or less admitted, should be narrated. The petitioner is a non-banking Finance Company having its registered office at Magma House, 24 Park Street, Kolkata. The petitioner has several branches across the country for providing services coming under the category of banking and other Financial

Services, Business Auxiliary Services and Business Support Services attracting the service tax. The respondent No. 3, the Commissioner of Service Tax at Kolkata issued several summons and notices to the petitioner Company for verification of the documents relating to the service tax on the finance lease under the category of Banking and other Financial Services and Business Auxiliary Services. Even a proceeding was initiated and demand was raised on Finance Lease Income, Collection Commission Income, Management Fees, Penal Interest, Termination Charges etc., along with an interest which is assailed by the petitioner before the Appellate Authority and the same is pending. However, an order of stay of the demand is passed by the Appellate Authority in the said appeal. Subsequently, the office of the Comptroller and Auditor General of India issued a notice regarding the service tax audit for the various period ranging from 2006, 2007 till 2009, 2010. The respondent No. 3 again issued several show cause notices to the petitioner on various other related issues and by an order dated 27.04.2012, the proceeding was dropped. The respondent No. 1 i.e. the Assistant Director, Directorate General of Central Excise Intelligence having its office at Kochi in the State of Kerala issued a summon dated 18.08.2012 and sought for various informations and documents pertaining to the financial year 2007, 2008, 2011 & 2012. Although the petitioner took the stand that they have been allotted centralized registration under the Kolkata Service Tax Commissionerate and the inquiry should be conducted by the Kolkata Zonal Unit but ultimately replied to the summons. It is further gathered that from time to time, the documents are furnished in terms of the various notices and/or summons and the oral statement was also recorded by the officials of the said respondent No. 1. According to the petitioner, those statements were recorded by the said respondent at the registered office of the petitioner at Kolkata. The prayer made in this writ petition relates to the direction against the respondents declaring that the inquiry initiated by the respondent No. 1 is illegal, bad in law and outcome of the arbitrary exercise of the power and without jurisdiction. However, several ancillary prayers are made for quashing the summons and the proceedings initiated by the respondent No. 1.

3. Mr. Mittal, learned Advocate appearing for the petitioner submits that the purported summons have been served at the registered office of the petitioner and the replies also made therefrom, it would, therefore, be construed that a part of the cause of action has arisen within the territorial jurisdiction of this High Court. He further submits that the statement of the officials of the petitioner has been recorded at the registered office, which is one of the constituents of the cause of action. He strenuously argues that if a fraction of the cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction to entertain the writ petition and relies upon a judgment of the Supreme Court in case of *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI)* and *Another, responding to Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI)* and *Another*, and in case of *Canon Steels P. Ltd. Vs. Commissioner of Customs*, . By citing a judgment of the larger bench of the Delhi High Court in case of *Sterling*

Agro Industries Ltd. Vs. Union of India (UOI) and Others, , Mr. Mittal submits that even a miniscule part of cause of action arose within the jurisdiction of the High Court, the writ petition would be maintainable before the said Court. Lastly Mr. Mittal relies upon a judgment of this Court in case of Eastern India Edible Oil Manufacturers" Association and Another Vs. Union of India (UOI) and Others, to contend that any action constitutes an evil consequence at the place of the business, it would give rise to a cause of action and, therefore, the writ petition is maintainable.

4. Per contra, the respondent authorities submit that a proceeding is initiated by the respondent No. 3 at Kochi in the state of Kerala upon issuance of the summons therefrom. Reply given to the said summons or the notices from the registered office cannot be taken as the accrual of the cause of action. Lastly it is contended that mere recording of the statement at the registered office by the respondent No. 1 does not confer jurisdiction under Article 226(2) of the Constitution of India.

5. Having regard to the respective submissions, it is undisputed that the cause of action can be ascertained from the bundle of facts, if proved, will grant the relief to the suitor. As has been held in case of Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, , the cause of action implies a right to sue. It is such a material facts which are imperative for the initiator to allege and prove in the following words:

6. Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitutes the cause of action. Clause of action is not defined in any statute. It has however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put it would mean that everything which, if not proved, gives the defendant an immediate right to judgement, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.

6. In Paragraph 18 of the said report, the Apex Court held that the facts pleaded in the writ petition must have some nexus in relation to the prayer to be granted and not those facts which has nothing to do with the prayer made therein. It is further held that even a small part of cause of action if arose within the territorial jurisdiction of a High Court, the Court will have jurisdiction in the matter which is also held by a larger bench in case of Sterling Agro Industries Ltd. (supra) in these words:

33. In view of the aforesaid analysis, we are inclined to modify the findings and conclusions of the Full Bench in New India Assurance Company Limited (supra) and proceed to state our conclusions in seriatim as follows:

(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/revisional

authority is situate and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted in as much as such a finding is totally based on the situs of the tribunal/appellate authority/revisional authority totally ignoring the concept of forum conveniens.

(b) Even if a miniscule part of cause of action arises within the jurisdiction of this Court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of Alchemist Ltd. (supra).

(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

(d) The conclusion that where the appellate or revisional authority is located constitutes the place of forum conveniens as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in question.

(e) The finding that the Court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a mala fide manner is too restricted/constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of mala fide alone.

(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in Ambica Industries (supra) and Adani Exports Ltd. (supra).

(g) The conclusion of the earlier decision of the Full Bench in New India Assurance Company Limited (supra) "that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens" is not correct.

(h) Any decision of this Court contrary to the conclusions enumerated herein above stands overruled.

7. The language employed under clause 2 of Article 226 of the Constitution of India is in symmetry with the provision of Section 20(c) of the CPC although, Section 141 of the CPC provides its non-applicability to the writ proceeding. Since both the provisions stands in pari materia, this Court does not find any impediment in considering the judgments rendered on the said section. On the above enunciation of law, the contention raised by the petitioner relating to the accrual of cause of action having arisen within the jurisdiction of this Court is required to be considered.

8. According to the petitioner, since the summons/notices have been issued at the registered office of the petitioner and the replies are made therefrom, it would constitute a part of the cause of action. In case of Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, , the supreme court held that mere sending of fax message from a particular place and the reply having received therefrom would not constitute an integral part of the cause of action. The similar proposition is echoed in case of National Textile Corporation Ltd. vs- Haribox Swalram reported in National Textile Corpn. Ltd. and Others Vs. Haribox Swalram and Others, in the following:

As discussed earlier, the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petitioner and the view to the contrary taken by the Division Bench cannot be sustained. In view of the above finding, the writ petition is liable to be dismissed....

9. This Court, therefore, does not find that mere issuance of the notice or giving a reply would constitute a cause of action.

10. The other point which the petitioner canvassed is that the purported action of the respondent No. 1 gives rise to an evil consequence at the place of the business of the petitioner at Kolkata, and thus the writ petition is maintainable. The petitioner draws such inspiration from the judgment of this Court delivered in case of Eastern India Edible Oil Manufacture Association (supra). The facts as it appear from the said report is that by virtue of a treaty between India and Nepal, an notification was issued in the Public Interest exempting custom duty on the vegetable fat imported from Nepal. Subsequently, the duty free import was restricted to one lakh metric ton on annual quota basis and such import was to be made only by the Central Wire Housing Corporation. By another notification, such right was jointly given to the Central Wire Housing Corporation and the State Trading Corporation.

11. The State Trading Corporation instead of importing itself entered into various agreements with the private agents authorizing them to import the vegetable fat on payment of service charges describing themselves to be a seller and the agents. The Custom Authorities allowed those agents to import the duty free vegetable fat which those agents sold at a lesser price in the market. The grievance of the petitioner therein was that the duty free import was permitted to the State Transport Corporation which cannot be assigned to a private agents who are selling the same at a lesser price and such an action give rise to an evil consequence to the petitioner causing infringement of their right guaranteed under Article 14 of the Constitution of India. It further appears from the said report that the import was made from the border of India and Nepal at Bihar and the goods are being sold in Kolkata. In the above backdrop, it is held:

16. If we apply the aforesaid principle to the fact of the present case, as soon as

the customs authority illegally cleared the commodities in the Bihar border of Nepal, although the illegality complained of is accomplished, such impropriety committed by the customs officers at Bihar did not give rise to any cause of action for filing any writ application in favour of the petitioners so long such act did not invade any of the rights of the petitioners. But the moment those duty-free goods intruded into the zone of the business of the petitioners, such intrusion gave rise to "evil consequence" to the petitioners causing infringement of their rights guaranteed by Article 14 of the Constitution of India and thus, a cause of action accrued in favour of the petitioners and such cause of action has arisen within the State of West Bengal, the place where the petitioners are carrying on their business notwithstanding the fact the illegalities were really committed by the customs officers at Bihar. As pointed out by the Apex Court in the case of Kusum Ingots and Alloys Limited (*supra*), although the petitioner therein wanted to challenge an enactment passed by the Parliament, they were not permitted to file the writ application in Delhi High Court as the impugned enactment had an "evil consequence" upon the petitioner at the place of their business at Bhopal notwithstanding the fact that the enactment was passed by the Parliament situated in New Delhi.

12. The evil consequence as tried to be contended by the petitioner must relate to the infringement of the rights as guaranteed under Constitution of India. No case of an infringement is made out in the writ petition. Rather it would appear from the pleadings made in the various paragraphs that compliance to the summons and/or notices is made and the entire facts as pleaded in the writ petition would reflect that the sheet anchor of the case founded on the action of the respondent No. 1 to reopen the investigation which has already been concluded and dropped by the respondent No. 3.

13. This Court, therefore, does not find that a slightest of the cause of action has arisen within the territorial jurisdiction of this Court and this Court, therefore, dismissed the writ petition for want of territorial jurisdiction.

14. Needless to record that none of the observation made herein shall be construed to have made on the merit of the disputes raised in this writ petition.

15. However, there shall be no order as to costs. Urgent photostat certified copy of the judgment, if applied for, be given to the parties on priority basis.