
(2018) 10 BOM CK 0076

In the Bombay High Court

Case No : Central Excise Appeal No. 28 Of 2017

M/S. Komastu India Pvt. Ltd.

APPELLANT

Vs

Customs, Excise And Service Tax Appellate Tribunal And Anr

RESPONDENT

Date of Decision : 19-10-2018

Acts Referred:

Customs Act, 1962 — Section 130
Central Excise Act, 1944 — Section 35G
Income Tax Act, 1961, — Section 260A
Wealth Tax Act, 1957 — Section 27A
Finance Act, 1994 — Section 83(V)
Maharashtra Value Added Tax, 2002 — Section 27
Central Sales Tax Act, 1956 — Section 9(2)

Citation : (2018) 10 BOM CK 0076

Hon'ble Judges : M.S. Sanklecha, J;Riyaz I. Chagla, J

Bench : Division Bench

Advocate : V.Sridharan, Prakash Shah, Jas Sanghavi, Divyasha Mathur, Viraj Bhate, Vipin Kumar Jain, Prabhakar Shetty, Swapnil Bangur, M. Dwivedi, P.S. Cardozo

Final Decision : Disposed Off

Judgement

M.S. Sanklecha, J

1. These five appeals, three of them under Section 130 of the Customs Act, 1962 (Customs Act) and two of them under Section 35G of the Central

Excise Act, 1944 (Excise Act) challenge individual orders passed by the Customs Excise and Service Tax Appellate Tribunal (Tribunal) at Mumbai.

2. These appeals were heard together on a preliminary objection raised by the Respondent's Revenue about hearing of these appeals at the principal

seat of this Court at Mumbai. This for the reason that the order in appeals arise out of dispute emanating from the districts which have been allotted

the benches of this court. Thus giving rise to a preliminary issue as under :Â?

â??Whether the appeals arising under Section 130 of the Customs Act and Section 35G of the Central Excise Act from the orders of the Tribunal at

Mumbai, can be presented and heard before the principal seat of the High Court , even when the impugned order of the Tribunal arises out of places

which are allotted to the Benches at Nagpur and Goa?

3. At the very outset it is clarified that there is no issue/dispute with regard to the jurisdiction of this Court to entertain these appeals and decide the

grievances of the Appellants to the orders of the Tribunal. The only issue is procedural i.e. the place where such appeals are to be filed and heard i.e.

at the principal seat at Mumbai or at the benches. The Benches are no less part of this Court and enjoy the same authority as the Principal seat of this

court.

4. The Respondents have objected to the hearing of these appeals by this Court at Mumbai and prayed for its transfer to the Nagpur, and Goa

benches of this Court. This on the basis that that the orders in original in all these cases were passed within the districts which have been allotted to

the respective benches at Nagpur and Goa of this Court in terms of the Bombay High Court Appellate Side Rule, 1960 (Appellate Side Rules).

Alternatively, all the respondents urge that in these appeals the forum conveniens in these cases are the respective benches at Nagpur and Goa as not

only the dispute / cause of action arise within the area allocated to the respective benches at Nagpur and Goa as assigned by the Appellate Side Rules

but even the Officers of the respondents are stationed there to instruct its advocates. Thus, a transfer of all these appeals to the respective benches at

Nagpur and Goa is sought by the RespondentÂ?Revenue.

5. In support of its preliminary objection, the respondents have placed reliance upon Chapter XXXI, Rule 1, 2 and 3 of the Appellate Side Rules which

inter alia reads as under :Â?

â??1. Presentation of matters at Nagpur, Aurangabad and Goa â?" All appeals, applications, references and petitions including petitions for exercise

of powers under Articles 226 and 227 of the Constitution arising in the Judicial Districts of Akola, Amravati, Bhandara, Buldhana, Chandrapur,

Nagpur, Wardha, Yavatmal and Gadchiroli which lie to the High Court of Bombay shall be presented to the Additional Registrar of that High Court at

Nagpur and shall be disposed of by the Judges sitting at Nagpur.

Provided that the Chief Justice may, in his discretion, order that any case arising in any such District shall be heard at Bombay;

Provided further that the Chief Justice may, in his discretion, order that any case presented at Bombay be heard at Nagpur.

2. All appeals, applications, references and petitions including petitions for exercise of powers under Articles 226 and 227 of the Constitution arising in

the Judicial Districts of Ahmednagar, Aurangabad, Beed, Jalgaon, Jalna, Nanded, Osmanabad, Parbhani and Latur which lie to the High Court of

Bombay shall be presented to the Additional Registrar of that High Court at Aurangabad and shall be disposed of by the Judges sitting at Aurangabad.

Provided that the Chief Justice may, in his discretion, order that any case arising in any such District shall be heard at Bombay;

Provided further that the Chief Justice may, in his discretion, order that any case presented at Bombay be heard at Aurangabad.

3. All appeals, applications, references and petitions including petitions for exercise of powers under Articles 226 and 227 of the Constitution of India,

arising in the State of Goa, which lie to the High Court of Bombay, shall be presented to the Special Officer at Panaji, Goa and shall be disposed of by

the Judges sitting at Panaji, Goa;

Provided that the Chief Justice may, in his discretion, order that any case arising in the State of Goa shall be heard at Bombay:

Provided further that the Chief Justice may, in his discretion, order that any case presented at Bombay be heard at Panaji, Goa.

6. Reliance is also placed upon the amendment made to the Appellate Side Rules on 27th October, 2014 by insertion of Chapter XXIVA, which

reads as under :

CHAPTER XXIVA

TAX APPEALS

1. Institution of Appeals " All appeals are to be instituted under the provisions of

(i) Section 260A of Income Tax Act, 1961,

(ii) Section 27A of the Wealth Tax Act, 1957,

(iii) Section 130 of the Customs Act, 1962,

- (iv) Section 35A of the Central Excise Act, 1944,
- (v) Section 83 in Chapter V of the Finance Act, 1994 (Service Tax) read with Section 35A of the Central Excise Act, 1944,
- (vi) Section 27 of Maharashtra Value Added Tax, 2002,
- (vii) Section 9(2) of the Central Sales Tax Act, 1956 read with Section 27 of the Maharashtra Value Added Tax, 2002.

Or

under any tax legislation other than which is referred to hereinabove or which is enacted or re-enacted or that may be enacted after the coming into

operation of these Rules which provide for an appeal to the High Court from an order of the Tribunal under such legislation. arising out of Kolhapur,

Nashik, Pune, Raigad, Ratnagiri, Sindhudurg, Satara, Sangli, Solapur and Thane Districts shall be presented to the Prothonotary and Senior Master of

High Court of Judicature at Bombay and the same shall be heard and disposed of by a Division Bench on the Original Side.

2. The Rules for filing such Direct and Indirect Tax Appeals on the Original Side will also apply mutatis mutandis, to all Tax Appeals arising from the

aforesaid Districts.â??

7. It is submitted by the Respondent's Revenue that on reading of the above provisions, it is clear that where a dispute arose within the specified

districts relating to particular benches, then, the appeals arising from such districts would have to be filed at the respective benches as

allocated/assigned to Principal seat and the Benches. It is only such appeals which arise out of districts of Kolhapur, Nashik, Pune, Raigad, Ratnagiri,

Sindhudurg, Satara, Sangli, Solapur and Thane and undoubtedly those arising within the limits of Greater Mumbai (Original Side matter), would be

presented/filed and heard at the Principal seat at Mumbai. It is also submitted that it is the practice of the Court as reflected in its Rules that the

dispute arising out of districts shall lie to the respective benches at Nagpur, Goa, Aurangabad. It is submitted that in the present facts, these appeals be

returned to be presented before the Benches at Nagpur and Goa to which the districts are allotted in terms of the Appellate Side Rules.

8. On the other hand, Mr. Sridharan, learned Senior Counsel a/w Mr. Shah and Mr. Jain, learned Counsel a/w Mr. Shetty appearing for the appellants

submit that the preliminary issue is concluded in favour of the Appellants. This

by the decisions of this Court in *Vinar Ispat Ltd. Vs. Commissioner of Central Excise*, (2012) 275 ELT 34 and in *Facor Steel Vs. Commissioner of Central Excise*, 320 ELT A357 where an identical objection by the Revenue was rejected. Thus the issue is no longer *res integra*. It is further emphasized that the decision of this Court in *Vinar Ispat Ltd.* (supra) merely followed the decision of the Constitutional Bench of the Supreme Court in *Sri. Nasiruddin Vs. State Transport Appellate Tribunal*, (1975) 2 SCC 671 where similar objection arising between the Lucknow Bench and the principal seat at Allahabad of the Allahabad High Court in terms of the United Provinces High Court (Amendment) Order, 1948 was resolved. This by holding that it is open to the litigant to select either of the benches of the Court he would like to approach being *dominus litis*. It is emphasized that the decision of this Court in *Vinar Ispat Ltd.* (supra) was rendered in the context of an appeal under Section 35G of the Central Excise Act.

9. Undoubtedly, the decisions of the co-ordinate benches of this Court in *Vinar Ispat Ltd.* (supra) and *Facor Steel Ltd.* (supra) would be binding upon us as it has not been reversed by the Hon'ble Supreme Court. In case, we have some reservation about the issue decided by it, only option available to us is to refer the issue to the Hon'ble the Chief Justice to constitute a larger bench to resolve the issue. This of course if the earlier decisions do not fall in the class of having been rendered *sub silentio* and / or *per incuriam*. Moreover, the decisions of the co-ordinate benches would cease to be binding where there has been a change in law and / or practice as enunciated in the Rules published by the Court. This as the earlier decisions this Court in *Vinar Ispat Ltd.* (supra) and *Facor Steel Ltd.* (supra) were all rendered prior to the insertion of Chapter XXIVAA on 27th October, 2014 and thus had no occasion to consider and deal with it. The aforesaid amendment clearly restricts the filing of tax appeals before the appellate side of the Principal Bench of this Court to only such appeals from orders of the Tribunal which arise out of the specified districts therein. Therefore, it is no longer the situs of the Tribunal which decides which of the benches or the principal seat of this Court to which an appeal lies but the place where the dispute arose. It must, therefore, follow, that appeals arising out of districts other than those mentioned in Chapter XXIVAA of the Appellate Side Rules, would in term of Chapter XXXI of the

Appellate Side Rules relate to the dispute arising from districts which require these tax appeals to be presented before the benches at Nagpur, Aurangabad and Goa dependant upon the district from where the dispute arose. Thus, in our view, these appeals as filed in view of Chapter XXIV read with Chapter XXXI of the Appellate Side Rules have to be transferred to the benches at Nagpur and Goa dependent entirely upon the place where the dispute arose/originated.

10. However, this was strongly objected to by the appellants. It was pointed out that in *Sri. Nasiruddin (supra)*, the Apex Court was concerned with a situation similar to that faced in these appeals by this Court. In the above case, the original order being passed within the jurisdiction of the Principal

Bench at Allahabad and the appellate order i.e. the order of the Tribunal being passed within the jurisdiction of the bench at Lucknow. The Apex

Court after analyzing the provisions of paragraph 14 of the United Provinces High Courts (Amalgamation) Order, 1948 (referred to as order) (similar

to Chapter XXXI Rules 1, 2 and 3 of the Appellate Side Rules) held that both the Courts at Allahabad and Lucknow would have jurisdiction to

entertain a petition under Article 226 of the Constitution of India. It held that it would be entirely for the party to choose which of the two benches it

would seek to move as part of the cause of action would have been arisen in both places i.e. where the original order was passed as well as at the

place where the appellate order was passed. In such cases, the litigant who is the dominus litis has an option to choose which bench he would select to

proceed with his case. Reliance was also placed by the Appellant upon the decision of the Supreme Court in *Manju Varma Vs. State of Uttar*

Pradesh, 178 ELT 64 and the decision of this Court in *Kishore Rungta & Ors. Vs. Punjab National Bank & Ors.* 2004 (4) Mah.L.J. 115 and in *Haji*

Abdul Razak Yasim Patel Vs. Bara Imam Masjid Trust & Ors. 2006(1) Mh.LJ 184. Moreover reliance is also placed upon the decision of the

Karnataka High Court in *Abdul Wajid Vs. The State of Karnataka*, (Writ Petition No.37302 / 2013) decided on 20th December, 2013. All this in

support of its contention that this bench should hear the appeals.

11. However there are two distinguishing features in these cases from the above decisions being relied upon by the Appellants. Firstly, all the above

decisions were concerned with a filing of a writ petition under Article 226 of the

Constitution of India and not with the filing of a statutory tax appeal as in this case. Thus, writ petitions unlike tax appeals are not governed by Chapter XXIVAA of the Appellate Side Rules. Moreover, the Apex Court in *Ambica Industries vs. Commissioner of Central Excise* 213 ELT 323 while dealing with an issue of jurisdiction between two Courts in respect of orders of the Tribunal having jurisdiction over two or more States held that for purposes of the statutory appeals under the Central Excise Act, it will not be the situs of the Tribunal which would decide the jurisdiction of the Court but the place where the dispute arose. It further in terms held that the decision of the Hon'ble Supreme Court in *Sri Nasiruddin (supra)* would not apply to such cases. Relying upon the above (although not strictly applicable to the present facts), one can proceed to hold that considerations in case of a writ would be different from that in case of statutory tax appeals. At this the Appellant did invite our attention to the decision of the Supreme Court in *Cannon Steel Pvt. Ltd. Vs. Commissioner of Customs (Export Promotion)* 2007 (218) ELT 161 where the court while dealing with an appeal under Custom Act had held that the Delhi High Court will have jurisdiction to entertain that an appeal from the order of the Tribunal at Delhi even though the dispute arose out of an import in Mumbai. We note that the decision of the Hon'ble Apex Court in *Cannon Steel Pvt. Ltd. (supra)* was rendered on 12 November 2007 that is after its decision in *Ambica Industries (supra)* which was rendered on 18th May 2007. However, the attention of the Court in *Cannon Steel Pvt. Ltd. (supra)* was not drawn to its earlier decision in *Ambica Industries (supra)*. In any case, in the present case we are not required to decide between the jurisdiction of two different Courts. This, as the Bombay High Court which includes the principal seat at Mumbai and the benches at Aurangabad, Nagpur and Goa, all undoubtedly have jurisdiction. Therefore, both the aforesaid decisions will not govern the issue for our consideration. Secondly the amendment by insertion of Chapter XXIVAA of the Appellate Side Rules with effect from 27th October 2014 specifically provides for the manner to determine before which benches of this court would appeals under Section 130 of the Customs Act and 35G of the Central Excise Act lie. Thus the filing of these appeals i.e. tax appeals would be governed by the newly inserted Chapter XXIVAA read with Chapter XXXI of the Appellate Side Rules. This

newly inserted Chapter XXIVAA of the Appellate Side Rule provides the test for the bench before which the statutory appeal would lie as not the

situs of the Tribunal but the place where the dispute arose i.e. originated from. In none of the decisions being relied upon by the appellant, did the

Court have to consider provisions as found in Chapter XXIVAA of the Appellate Side Rules as in these cases. It is the above Chapter XXIVAA read

with Chapter XXXI of the Appellate Side Rules, which will decide the place where the tax appeals should be filed.

12. It cannot be disputed that the Bombay High Court has jurisdiction to entertain an appeal under the Central Excise Act and the Customs Act from

the orders of the Tribunal at Mumbai. The issue for consideration is only which of the benches (includes the principal bench at Mumbai) would accept

and decide a statutory tax appeal. The practice of the Court as enunciated in Chapter XXIVAA read with Chapter XXXI Rules 1 to 3 of the

Appellate Side Rules provide that appeal under the Customs Act and the Central Excise Act i.e. tax appeals which arise out of districts relating to

which of the benches at Nagpur, Aurangabad, Goa and the principal bench have been allotted are to accept the filing of an statutory tax appeal. It is

after having so filed, in facts of the particular case where the parties or any of the party desire that the case should be transferred to be heard at the

Principal seat at Bombay or visÂaÂversa, that an application can be made to the Hon'ble the Chief Justice, who may in his discretion transfer the

appeal from the benches of this Court to the Principal Bench at Bombay or visÂaÂvis for the purposes of hearing. This is in terms of the provisos to

Rule 1, 2 and 3 of Chapter XXXI of the Appellate Side Rules. However, the presentation of these five appeals in terms of the High Court Rules has to

be before the appropriate bench (includes the principal seat at Mumbai) on the basis of the district where the dispute arose. It is a settled position in

law that the practice of the Court is the law of the Court. In fact, the Supreme Court in Collector of Central Excise Vs. Standard Motors Products 41

ELT 617 had while refusing to interfere with the practice of the Court relied upon the maxim â??Cursus curiae est lex curiaeâ? i.e. practice of the

Court is the law of the Court. In this case the Appellate Side Rules is the published Rules making it known to all concerned that the manner in which

this Court has distributed the work amongst its benches (including the principal seat). Therefore these Rules are higher than any unwritten practice

and have to be followed by those who seek to challenge order of the Tribunal passed at Mumbai in respect of Excise and Customs appeals. Thus, in

terms of the Appellate Side Rules, the appeals have to be presented at that bench (including the principal seat) which has been allocated the place

where the dispute has arisen and not the place where the appellate authority is situated.

13. In the above view, the impugned orders passed by the Tribunal in excise appeals before us relate to and arise out of disputes relating to

manufacture of excisable goods which have taken place at Nagpur. Therefore, the Excise Appeal Nos. 28 of 2017 and 105 of 2017 before us have to

be heard by the bench of this Court at Nagpur. So far as the customs appeals are concerned, the import of the goods giving rise to the dispute

between the parties in Customs Appeal Nos. 19 of 2017 and 20 of 2017 arose at Goa. Therefore, these two appeals relating to the customs have to be

heard at the bench of this Court at Goa. The dispute with regard to custom duty in Customs Appeal Nos. 25 of 2017 arose at Nagpur and, therefore,

to be heard at Nagpur. We further find that the Commissioner and the Officers of the respondent Revenue who would instruct the Advocates will be

available at the Benches and the dispute also arose at that place as the liability of the appellant to payment of customs duty and excise duty arose on

account of their activity at a place which is allotted to a particular bench where the party has to file a tax appeal. In the two excise appeals, title also

indicates that the appellants are stationed at Nagpur.

14. Accordingly, the preliminary question is answered in the negative that is in favour of the respondent Revenue and against the appellants. Thus, no

occasion to consider the merits of these appeals at Mumbai arises.

15. In the above circumstances, the Registry is directed to send these five appeals to the respective benches of this Court at Goa and Nagpur.

16. In passing we may point out that the number of Excise and Customs Appeals pending before the benches are very small in number then those

pending before the principal seat of this Court. In fact, we called for figures of pending Excise, Customs and Service tax appeals from the Registry.

As on 17th September 2018 the Registry informs us that the Excise and Customs Appeals pending in Mumbai are a little over 1000; at Aurangabad

Bench 22 (this is disputed by Mr. Shah for the Appellant); at Nagpur Bench 36;

and at Goa Bench 74. These are official figures and there is no reason not to accept the same merely because it is disputed. Therefore, there is greater likelihood that the dispute raised in these appeals may be resolved earlier at the benches than at the principal seat, if after admission it is kept pending here.

17. Therefore, the question as framed is answered in the negative i.e. the tax appeals are to be filed before the bench allotted to the district where the dispute arose.

18. Accordingly, the Registry is directed to transfer the papers and proceedings relating to :Â?

- (a) Customs Appeal Nos. 19 of 2017 and 20 of 2017 to the Goa Bench;
- (b) Customs Appeal Nos. 25 of 2017 to the Nagpur Bench and;
- (c) Excise Appeal Nos. 28 of 2017 and 105 of 2017 to the Nagpur Bench.