
(2011) 04 KAR CK 0153
In the Karnataka High Court
Case No : C.S.T.A. No. 26 of 2009

Neptune Trade Links Pvt. Ltd.

APPELLANT

Vs

Commissioner of Customs, Cochin

RESPONDENT

Date of Decision : 08-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2012) 278 ELT 451 : (2012) 28 STR 92

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : Kuljeet Bawan for K. Sachindra Karanth, for the Appellant; C. Shashikantha, for the Respondent

Judgement

N. Kumar, J.J.

1. This appeals by the assessee challenging the order passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Bangalore [2009 (243) E.L.T. 622 (Tri. - Bang.)] against the order refusing to waive interest. When the matter is taken up for hearing learned Counsel for the respondent raised a preliminary objection regarding a territorial jurisdiction of this Court to entertain and hear this appeal. He contended that the Order-in-Original No. 7/2008 is passed by the Commissioner of Customs, Cochin. It is that order which was challenged by the assessee before the CESTAT, South Zonal Bench at Bangalore. In the appeal, the assessee is challenging the correctness of the order passed by the CESTAT, Bangalore. The proceeding originated from Cochin. It is the High Court of Kerala, alone which has the jurisdiction to decide the validity of the order passed by the Tribunal. In support of his contention, he relied on the judgment of the Apex Court in the case of Ambica Industries v. Commissioner of Central Excise reported in 2007 (213) E.L.T. 323 (S.C.). Therefore, the question of territorial jurisdiction in this High Court is taken up for consideration as preliminary point.

2. The learned Counsel for the appellant relied on a judgment of the Apex Court

in the case of Canon Steels Pvt. Ltd. v. Commissioner of Customs (Export Promotion) reported in 2007 (218) E.L.T. 161 (S.C.) = 2009 (15) S.T.R. 97 (S.C.) to contend that this Court has a territorial jurisdiction to entertain and decide the appeal.

3. Dealing with the jurisdiction of the High Court of Bench of the High Court to entertain the petition under Article 226 of the Constitution in the case of Sri Nasiruddin Vs. State Transport Appellate Tribunal, the Apex Court has held as under :-

"7. To sum up, our conclusions are as follows. First, there is no permanent seat of the High Court at Allahabad. The seats at Allahabad and at Lucknow may be changed in accordance with the provisions of the Order. Second, the Chief Justice of the High Court has no power to increase or decrease the areas in Oudh from time to time. The areas in Oudh have been determined once by the Chief Justice and, therefore, there is no scope for changing the areas. Third, the Chief Justice has power under the second proviso to paragraph 14 of the Order to direct in his discretion that any case or class of cases arising in Oudh areas shall be heard at Allahabad. Any case or class of cases assessee these which are instituted at Lucknow. The interpretation given by the High Court that the word "heard" confers powers on the Chief Justice to order that any case or class of cases arising in Oudh areas shall be instituted or filed at Allahabad Instead of Lucknow is wrong. The word "hear" means that cases which have already been instituted or filed at Lucknow may in the discretion of the Chief Justice under the Second proviso to paragraph 14 of the Order be directed to be heard at Allahabad. Fourth, the expression "cause of action" with regard to a civil matter means that it should be left to the litigant to institute cases at Lucknow Bench or at Allahabad Bench according to the cause of action arising wholly or in part within either of the areas. If the cause of action arises wholly within Oudh areas then the Lucknow Bench will have jurisdiction. Similarly, if the cause of action arises wholly outside the specified area in Oudh then Allahabad will have jurisdiction, If the cause of action in part arises in the specified Oudh area and part of the cause of action arises outside the specified areas, it will be open to the litigant to frame the case appropriately to attract the jurisdiction either at Lucknow or at Allahabad. Fifth, a criminal case arises where the offence has been committed or otherwise as provided in the Criminal Procedure Code. That will attract the jurisdiction of the Court at Allahabad or Lucknow. In some cases depending on the facts and the provision regarding jurisdiction, it may arise in either place."

4. Following the said judgment in the case of Canon Steels Private Limited's case, the Apex Court has held as under;-

"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 of 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.

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 involving the doctrine of forum conveniens. (See Bhagat Singh Bugga Vs. Dewan Jagbir Sawhney, Madanlal Jalan v. Madanlal (AIR 1949 Cal 495), Bharat Cooking Coal Ltd v Jharia Talikes & 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).

5. However, after referring to the aforesaid Constitution Bench judgment and various other judgments of the Apex Court as well as the various judgments of the High Court dealing with the identical issue, the Apex Court has held as under :-

"13. The Tribunal, as noticed hereinbefore, exercise Jurisdiction over all the three States. In all the three states there are High Courts. In the event, the aggrieved person is treated to be the dominus litus, as a result whereof, he elects to file the appeal before one or the other High Court, the decision of the High Court shall be binding only on the authorities which are within its jurisdiction. It will be of persuasive value on the authorities functioning under a different jurisdiction. If the binding authority of a High Court does not extend beyond its territorial jurisdiction and the decision of one High Court would not be a binding precedent for other High Court or Courts of Tribunals outside its territorial jurisdiction, same sort or judicial anarchy shall come into play. An assessee, affected by an order of assessment made at Bombay, may invoke" the jurisdiction of the Allhabad High Court to take advantage of the law laid down by it and which might suit him and thus he would be able to successfully evade the law laid down by the High Court of Bombay.

14. Furthermore, when an appeal is provide under a statute, Parliament must have thought of one High Court. It is a different matter that by way of necessity, a Tribunal may have to exercise jurisdiction over several States but it does not appeal to any reason that Parliament intended, despite providing for an appeal before the High Court, that appeals may be filed before different High Court at the sweet will of the party aggrieved by the decision of the Tribunal.

15. In a case of this nature, therefore, the cause of action doctrine may not be invoked.

17. There cannot be any doubt whatsoever that in terms of Article 227 of the Constitution of India as also clause (2) of Article 226 thereof, the High Court would exercise its discretionary jurisdiction as also power to issue writ of certiorari in respect of the orders passed by the Subordinate Courts within its territorial jurisdiction of if any cause of action has arisen there within by the same tests cannot be applied when the appellate court exercise a jurisdiction over Tribunal situated in more one State. In such a situation, in our opinion, the

High Court situated in the State where the first court is located should be considered to be the appropriate appellate authority, CPC did not contemplate such a situation. It provides for jurisdiction of each court. Even a District Judge must exercise its jurisdiction only within the territorial limits of a State. It is inconceivable under the CPC that the jurisdiction of the District Court would be exercisable beyond the territorial jurisdiction of the District, save and except in such matters where the law specifically provides therefor.

37. However, we are not oblivious of another line of authority where the situs of the Tribunal was held to be the bases for determination of the jurisdiction of the High Court. In the said decisions, however, the contentions which have been raised before us did not arise for consideration.

38. We have noticed hereinbefore that if the decision of the High Court in the aforementioned question taken to its logical conclusion, the same would lead to a great anomaly. It would also give rise to the problem of forum shopping. We may notice some examples to show that the determination of the appellate forum based upon the situs of the Tribunal would lead to a anomalous result. For example, an assessee affected by an assessment order in Bombay may invoke the jurisdiction of the Delhi High Court to take advantage of the law laid down by it which may be contrary to judgments of the High Court of Bombay, This cannot be allowed. (See Suresh Desai and Associates v. CIT, 1998 (230) ITR 912 at 915-917 and CCE v. M/s. Technological Institute of Textile in 76 (1998) DLT 862 (DB)."

Thus, we have three judgment of the Apex Court which includes a judgment of the Constitution Bench. The Judgment rendered by the Apex Court in Ambica Industries case is directly in conflict with Canon steels Private Limited. It is not possible to reconcile them. In both the Judgments, they have referred to the judgment of the Constitution Bench and it has been interpreted as aforesaid. Therefore, we are bound by the interpretation also. As the judgment in Ambica's case refers to various judgments of Apex Court as well as the High Courts and the said judgment is not noticed in Canon Industries Private Limited's case, we are, of the view that it would be appropriate for the Apex Court to clarify the legal position in this regard. However, we are inclined in the aforesaid circumstances to follow the judgment rendered in Ambica Industries case and hold that this Court has no jurisdiction. Accordingly, we pass the following :

ORDER

The appeal is rejected for want of territorial jurisdiction in view of the judgment of the Apex Court in the case Ambica Industries v. Commissioner of Central Excise reported in 2007 (213) E.L.T. 323 (S.C.). It is open to the appellant either to approach the Apex Court against this order or in terms of the order to approach the High Court of Kerala for appropriate relief.

High court registry is directed to return all the certified copies filed along with this appeal to the appellant to enable him to approach either the Supreme Court

or the High Court of Kerala.