
(2012) 07 MAD CK 0014

In the Madras High Court

Case No : Writ Petition No's. 29672-29674 of 2011

Outokumpu Stainless

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 226(2)

Citation : (2013) 288 ELT 67

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : Naresh Thacker for Karthick Sundaram, for the Appellant; M. Raveendran, Addl. Solicitor General for P. Mahadevan, S.C.C.G., K. Ravi Anantha Padmanabhan, Vijay Narain and T. Ramesh, for the Respondent

Final Decision : Dismissed

Judgement

P.P.S. Janarthana Raja, J.—Since all the writ petitions arise out of common issue, they are taken up together for final disposal. The brief

facts arising out of the writ petitions are as follows:-

(a) The petitioner company is a Limited Company incorporated under the Finland Companies Act. It is engaged in the production and sale of

stainless steel products of various grades including "stainless steel cold rolled flat products of 400 series having width below 600 mm". The

petitioner is a 100% subsidiary of Outokumpu Oyj, Finland. The subject company is a global leader in stainless steel. Outokumpu Oyj has been

listed on the NASDAQ OMX Helsinki since 1988.

(b) M/s. Jindal Stainless Ltd., the above mentioned fourth respondent has filed an application in accordance with the Customs Tariff Act, 1975 and

Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty

on Dumped Articles for Determination of Injury) Rules, 1995

alleging dumping of stainless steel of 400 series having a width of less than 600 mm including all Ferritic & Martensitic grades excluding Razor

Blade Steel originating in or exported from European Union, Korea RP and USA. The Directorate General of Anti-dumping and Allied Duties,

viz., the above mentioned second respondent on the basis of sufficient prima facie evidence decided to initiate an investigation into the alleged

dumping of the subject goods from the above countries. The initiation Notification is dated 16-8-2010. The petitioner through an Advocate sent a

letter dated 14-9-2010 and filed an authorization letter before the second respondent, signed by the petitioner, authorizing them to represent the

petitioner in the investigation proceedings and requested to provide a copy of the non-confidential petition and communication issued for the

interested parties, if any. Further, the Advocates, by their letter dated 22-9-2010, requested the second respondent to grant time of four weeks to

the petitioner for filing the exporters questionnaire. Accordingly, the petitioner's Advocate by their letter dated 22-10-2010, submitted two hard

copies along with soft copy of Exporters Questionnaire in the prescribed form and manner to the second respondent on behalf of the petitioner. A

public hearing was conducted by the second respondent on 2-9-2011 during which the petitioner through its advocates presented their case. One

of the specific contentions argued by them was that the three grades of subject goods should not form part of the product under investigation. The

second respondent directed the petitioner to file written submissions within 5 working days. The petitioner's Advocate filed written submission on

5-9-2011 submitting that three grades of subject goods should not be a part of Anti-dumping investigation. The petitioner's Advocate thereafter

filed detailed written submissions on 9-9-2011 in support of their contention that the said three grades should not form part of the Anti-dumping

investigation. The petitioner's Advocates by their letter dated 20-9-2011 filed their Rejoinder to the Domestic Industry's written submissions. On

8-11-2011, the disclosure statement was issued by the second respondent, two months after the public hearing stating that the submissions on

exclusions were placed belatedly in the investigation and hence the issue of the goods exported by Outokumpu being "like articles" was not

considered. On 11-11-2011, comments were filed by the petitioner to disclosure statement stating that non-consideration of submission of

exclusion of grades raised by the petitioner was improper. However, on 14-11-2011, impugned final findings recommending the levy of Anti-

dumping duty was passed, wherein, the recommendation is to the following effect:-

The Authority notes that the investigation was initiated and it was notified to all interested parties. Adequate opportunity was given to the exporters,

importers and other interested parties to provide information on the aspects of dumping, injury and causal link. Having initiated and conducted an

investigation into dumping, injury and the causal link thereof in terms of the AD Rules and having finally established positive dumping margins as

well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of definitive Anti-

dumping duty is required to offset dumping and consequential injury to domestic industry.

Aggrieved by the same, the present writ petitions are filed by the petitioner.

2. The learned counsel appearing for the petitioner contended that the order passed by the second respondent is illegal, wrong and without

justification. He further contended that the second respondent has not satisfied himself as to whether the fourth respondent-Domestic Company,

who is a manufacturer of the like article and like articles means an article which is identical or alike in all respects to the article under investigation

for being dumped in India. The specific plea of the petitioner right through the investigation proceedings is that the three grades of subject goods

should not be a part of Anti-dumping investigation. He further specifically pointed out that Grades EN 1.4509 and EN 1.4512 claimed to be

produced by JSL, the above mentioned fourth respondent are not as per specifications promulgated by EN and as such it cannot be said that

identical goods are being manufactured in India by the domestic industry; Grades 1.4003 is not produced and sold by JSL. Further JSL does not

produce and sell any other grade which can effectively substitute Grade 1.4003 of the subject goods. He further contended that in support of the

aforsaid submission, the petitioner along with other evidences, produced letters issued by end-users of the product under consideration and the

second respondent ought to have considered the same before issuing the Final Finding Notification. It is also contended by the counsel for the petitioner that once it is proved that JSL was not manufacturing the like goods, the question of determining injury and subsequent imposition of Anti-dumping duty did not arise as there is no domestic industry in existence. It is further submitted that before issuing any final finding notification, it is mandatory for the second respondent to ensure if a domestic industry producing the like articles is in existence. According to the learned counsel for the petitioner, when a specific plea was raised, the same was not considered, hence, the final finding notification passed by the second respondent is only in violation of principles of natural justice. He further contended that the second respondent ought to have given reason for arriving at such conclusion showing proper application of mind. He further contended that the writ petition is maintainable and this Court also entertained writ petitions against the final finding notification. He further submitted that cause of action had arisen within the jurisdiction of this Court and in these circumstances, he prayed for setting aside the Final Finding Notification passed by the second respondent and allowing the writ petitions.

3. The learned Additional Solicitor General appearing for the respondents 1 and 2 filed a counter affidavit denying all the allegations stated in the writ petitions. He further contended that the writ petitions are not maintainable on the ground that there arose no cause of action within the jurisdiction of this Court and there is alternative remedy available under the Statute. He therefore prayed for dismissal of the writ petitions. He further contended that enough opportunity was given to the petitioner to produce evidence, however, the petitioner has not produced the particulars on the particular date. Therefore, the second respondent considered the materials available on record and passed the order and also the order has to be passed in time bound manner. He further contended that the second respondent has considered all the facts and circumstances of the case and correctly came to a conclusion recommending levy of antidumping duty. He further submitted that the said Final Finding Notification has to be confirmed.

4. Learned counsel appearing for the fourth respondent filed a counter affidavit

and stated that the second respondent had considered all the facts and circumstances of the case and only after giving proper opportunity, the order was passed. He further contended that the final findings given by the second respondent is based on valid material and further it was submitted that there is right of appeal against the impugned order as per the provision of the Act and the petitioner ought to have filed appeal. He further contended that there arose no cause of action wholly or in part within the territories in relation to which this Court exercise its jurisdiction and therefore the writ petitions are to be dismissed.

5. Heard the learned counsel appearing for the petitioner and for the respondents. I have perused the documents available on record. The three issues that arise for consideration before this Court are as follows:-

(i) Whether any cause of action had arisen within the territorial jurisdiction of this Court so as to entertain the writ petitions under Article 226 of the Constitution of India?

(ii) Whether the impugned order passed is in violation of principles of natural justice?

(iii) Whether the second respondent has considered all the materials on record and correctly decided the matter in accordance with law?

To decide the first issue i.e., Whether a part of cause of action had arisen within the territorial jurisdiction of this Court so as to entertain the writ

petitions under Article 226 of the Constitution of India, it is necessary to understand the term "cause of action". However, the term "cause of

action" has not been defined in the Constitution of India nor in Civil Procedure Code. In the case of Kusum Ingots and Alloys Ltd. Vs. Union of

India (UOI) and Another, the Supreme Court considered the scope of expression "cause of action" and in paragraph 6, it is held as follows:-

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.

Cause 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 this Court. Negatively put, it would mean that everything

which, if not proved, gives the defendant an immediate right to judgment, 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.

In yet another judgment, in the case of Alchemist Limited and Another Vs. State Bank of Sikkim and Others, the Supreme Court considered the

scope of Article 226(2) and "cause of action" in more detail. In that case in paragraphs 20, 21 and 22, it is stated as follows:-

20. It may be stated that the expression "cause of action" has neither been defined in the Constitution nor in the Code of Civil Procedure, 1908. It

may, however, be described as a bundle of essential facts necessary for the plaintiff to prove before he can succeed. Failure to prove such facts

would give the defendant a right to judgment in his favour. Cause of action thus gives occasion for and forms the foundation of the suit.

21. The classic definition of the expression "cause of action" is found in *Cooke v. Gill* wherein Lord Brett observed:

Cause of action" means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment

of the court.

22. For every action, there has to be a cause of action. If there is no cause of action, the plaint or petition has to be dismissed.

6. In the same judgment, in paragraphs 15, 16 and 17, the Apex Court considered the scope of Article 226(2) of the Constitution of India and

held as follows:-

15. The effect of the above decisions was that no High Court other than the High Court of Punjab (before the establishment of the High Court of

Delhi) had jurisdiction to issue any direction, order or writ to the Union of India, because the seat of the Government of India was located in New

Delhi. Cause of action was a concept totally irrelevant and alien for conferring jurisdiction of the High Courts under Article 226 of the Constitution.

An attempt to import such concept was repelled by this Court. In the circumstances, Article 226 was amended by the Constitution (Fifteenth

Amendment) Act, 1963 and after Clause (1), new Clause (1-A) was inserted which read as under:-

226. (1-A) 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 Government or authority or the residence of such person is not within those territories.

16. It may be stated that by the Constitution (Forty-second Amendment) Act, 1976, Clause (1-A) was renumbered as Clause (2). The underlying

object of amendment was expressed in the following words:

Under the existing Article 226 of the Constitution, the only High Court which has jurisdiction with respect to the Central Government is the Punjab

High Court. This involves considerable hardship to litigants from distant places. It is, therefore, proposed to amend Article 226 so that when any

relief is sought against any Government, authority or person for any action taken, the High Court within whose jurisdiction the cause of action arises

may also have jurisdiction to issue appropriate directions, orders or writs.

(emphasis supplied)

The effect of the amendment was that the accrual of cause of action was made an additional ground to confer jurisdiction on a High Court under

Article 226 of the Constitution.

17. As Joint Committee observed.

This clause would enable the High Court within whose jurisdiction the cause of action arises to issue directions, orders or writs to any Government,

authority or person, notwithstanding that the seat of such Government or authority or the residence of such person is outside the territorial

jurisdiction of the High Court. The Committee feels that the High Court within whose jurisdiction the cause of action arises in part only should also

be vested with such jurisdiction.

The facts in the above judgment is that the appellant company is having its registered and corporate office at Chandigarh. Respondent 1 is State

Bank of Sikkim and Respondent 2 is the State of Sikkim. In that case, the Company contended that part of cause of action had arisen within the

jurisdiction of Punjab and Haryana High Court and relied on the following facts:-

(i) the appellant Company has its registered and corporate office at Chandigarh;

(ii) the appellant Company carries on business at Chandigarh;

(iii) the offer of the appellant Company was accepted on 20-2-2004 and the acceptance was communicated to it at Chandigarh;

(iv) part-performance of the contract took place at Chandigarh inasmuch as Rs. 4.50 crores had been deposited by the appellant Company in a

fixed deposit at Chandigarh as per the request of the first respondent;

(v) the Chairman and Managing Director of the first respondent visited Chandigarh to ascertain the bona fides of the appellant Company;

(vi) negotiations were held between the parties in the third week of March, 2005 at Chandigarh;

(vii) letter of revocation dated 23-2-2006 was received by the appellant Company at Chandigarh. Consequences of the revocation ensued at

Chandigarh by which the appellant Company is aggrieved.

The respondents relied on the following facts:-

(i) registered and corporate office of the first respondent Bank is at Gangtok i.e., Sikkim;

(ii) secretariat of the second respondent State is situated at Gangtok i.e., Sikkim;

(iii) offers were called for from various parties at Gangtok;

(iv) all offers were scrutinised and a decision to accept offer of the appellant Company was taken by the first respondent Bank at Gangtok;

(v) the State Government's decision not to approve the proposal of the appellant Bank was taken at Gangtok;

(vi) the meeting of the Board of Directors of the first respondent Bank was convened at Gangtok and a resolution was passed to withdraw the

letter dated 20-2-2004 at Gangtok;

(vii) a communication was dispatched by the first respondent to the appellant Company on 23-0-2004 from Gangtok.

7. The Supreme Court after considering the above factual matter, came to a conclusion and in paragraphs 37 and 38, held as follows:-

37. From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of

deciding whether facts averred by the appellant-petitioner would or would not constitute a part of cause of action, one has to consider whether

such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action

arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless must be a "part of

cause of action", nothing less than that.

38. In the present case, the facts which have been pleaded by the appellant Company, in our judgment, cannot be said to be essential, integral or

material facts so as to constitute a part of "cause of action" within the meaning of Article 226(2) of the Constitution. The High Court, in our opinion,

therefore, was not wrong in dismissing the petition.

8. Hence, taking into consideration all the above principles enunciated in the judgments of the Supreme Court (cited supra), the principle that could

be culled out is that the facts pleaded must constitute a material, essential or integral part of cause of action. In the present case, the petitioner

pleaded cause of action in paragraph 20 of the affidavit filed in support of the writ petitions and stated as follows:-

The Petitioner is an exporter of one of the said three grades in India and for the balance two grades they have received purchase inquiries from

various domestic users and the same is under consideration. One of the ports through which the goods are exported by the petitioner is the

Chennai Port. Grade 1.4509 is regularly imported by various importers in Chennai Port. The exported consignments of the said three grades of the

subject goods on which anti-dumping duties are likely to be recommended by the respondent No. 2 will have to be paid when cleared from the

bonded Customs Warehouse at ICD, Chennai by filling bills of entry as proved under the Customs Act, 1962. Thus, assessment of duties upon

clearance of the subject goods exported by the petitioner presently takes place at Chennai i.e., within the State of Tamil Nadu. Thus, the injury by

way of assessment and payment of anti-dumping duties on the three grades of the subject goods exported by the petitioner would be caused to the

petitioners within the State of Tamil Nadu. Thus, as aforesaid, most of the consequences-of the issue involved in the present petition shall fall on the

petitioners within the State of Tamil Nadu and therefore, the petitioners are constrained to approach this Hon"ble Court for appropriate orders,

writs and directions inasmuch as the cause of action for filing the present petition by the petitioner has arisen within the territorial jurisdiction of this

Hon"ble Court.

From reading of the pleadings stated above, it is clear that Anti-Dumping duty is payable when the concerned goods are cleared through the

Chennai Port i.e., assessment of duties upon clearance of the subject goods exported by the petitioner takes place at Chennai. So, the issue is

whether the assessment and payment of Anti-Dumping duty on the goods that is going to take place constitute a material, essential or integral part

of the cause of action. It certainly does not constitute cause of action. An anticipatory event will not give cause of action. A cause of action must

exist and it is a condition precedent before initiation. By no means, the above factor constitute material, essential or integral part of cause of action.

It is also pertinent to note that the petitioner is a Non-Resident Company and represented by its Power of Attorney holder, who resides at New

Delhi. The second respondent office, who passed the impugned order is also situated at New Delhi. It is also stated that in the export

questionnaire, the petitioner had given its address for communication at New Delhi. Moreover, the appellate authority is also in Delhi.

9. Taking into consideration the principles enunciated in the judgments of the Supreme Court in the case of (i) Alchemist Ltd. and Another v. State

Bank of Sikkim and Others and (ii) Kusum Ingots Alloys Ltd. v. Union of India (UOI) and Another (cited supra), this Court is of the view that no

cause of action had arisen within the territorial jurisdiction of this Court to entertain the writ petitions. Therefore, the writ petitions are not

maintainable. Hence, it is not necessary for this Court to adjudicate the other contentions advanced by the petitioner. In the result, the writ petitions

are dismissed with liberty to the petitioner to approach the appropriate court for redressal of its grievances. No costs. Connected Mps are closed.