

(1985) 01 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2736 of 1984

Progressive Poly Plast Co. (P.) Ltd.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 31-01-1985

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Customs Act, 1962 — Section 128, 18, 46, 47

Citation : (1985) 5 ECC 195 : (1985) 2 ILR (P&H) 282

Hon'ble Judges : Surinder Singh, J;S.P. Goyal, J;D.S. Tewatia, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Surinder Singh, J.—During the course of motion hearing of the present Writ Petition and two other connected writ petitions, viz., Civil Writ Petitions Nos. 2791 and 4606, of 1984, some common questions have arisen for consideration in these cases, though the objections in this behalf were not raised by the respondents in their written statements in all the cases. In view of the importance of such questions which are quite a few in number, I would have rest content by passing a short order but my learned Brother having indicated his dissent, I proceed to pass a speaking order.

2. With a view to understand the implications of the points which fall for consideration, the facts of the present Writ Petition (Civil Writ Petition No. 2736 of 1984) may be briefly noticed. The petitioner-firm is a company registered under the Indian Companies Act, 1956 with its registered office at Chandigarh. It is stated that Messrs. Dioglas Co. Ltd., Bangkok (Thailand) through its Liaison Officer/Indentor M/s. Mitsubishi Corporation, 36 Janpath, New Delhi, entered into a contract with the petitioner-company for the supply of 500 M.T. acrylic plastic scrap at the rate of U.S. \$240 per metric ton vide indents Annexures P-1 and P-2 to the writ petition. M/s. Khanna Enterprises of Pinjore (Ambala) obtained two import licences from the competent authority for the import of acrylic plastic

scrap vide import licences, copies Annexures P-3 and P-4. The said firm appointed the petitioner-company as their agent for the purpose of importing the above mentioned commodity by means of two authority letters, Annexures P-5 and P-6. The petitioner-company opened irrevocable documentary credit for U.S. \$61390 with the Punjab National Bank, Chandigarh, as per letters of credit, copies Annexures P-7 and P-8. A consignment of 69 M.T. acrylic plastic scrap was despatched for the petitioner-company by shipment on April 19, 1984 in accordance with the indents, Annexures P-1 and P-2 at the price and the rate mentioned in these documents, i.e., U.S. \$240 per metric ton.

3. It is stated that the Collector of Customs, Bombay, respondent No. 2 while releasing the commodity on May 30, 1984 did not take into account the assessable value as mentioned in the invoice, for the purpose of levying customs duty. Instead, the said respondent arbitrarily and without notice to the petitioner, enhanced the original value of the commodity to U.S. \$475 per metric ton and assessed the customs duty on the said enhanced value. Copy of the assessment order has been annexed as Annexure P-10. It is the case of the petitioner that according to the enhanced value assessed by respondent No. 2 the petitioner-company is called upon to pay Rs. 4,25,281 more by way of customs duty. The petitioner-company was also ordered to deposit in cash Rs. 85,056.32 on account of 20% of the customs duty and for the remaining amount it was ordered to execute a bond, copy of which is Annexure P-11. According to the petitioner-company, it was obliged to make the aforesaid payment and execute the required bond, in order to avoid payment of huge demurrage in case the delivery of the goods was not taken. In fact, the respondent is said to have taken about twelve days in the clearance of the goods which resulted in the company paying a huge demurrage. The petitioner has challenged the action of the respondents in imposing the enhanced customs duty on the consignment received by them as this would affect all future consignments to be imported by them from Thailand and Japan by virtue of the indents Annexures P-1 and P-2.

4. The points raised by the learned Counsel for the petitioner in these cases may now be taken into account as under:-

I. Territorial jurisdiction:

The question as to whether this Court has territorial jurisdiction to entertain the writ petitions, or not, cropped up for consideration during the course of arguments and as already observed, no such objection was raised on behalf of the respondents in this respect. Mr. Kuldip Singh, learned Counsel for the petitioner has contended that the jurisdiction of this Court is not ousted merely because the office of respondent No. 2 whose order of assessment is challenged in these writ petitions, is located at Bombay. The learned Counsel has highlighted the following points to support his contention that the Court has the jurisdiction to entertain the petitions:

(a) Article 226(2) of the Constitution of India provides that "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."

(b) The following circumstances, according to the learned Counsel are a pointer to the fact that the cause of action partly, if not wholly, has arisen at Chandigarh, which is the seat of this Court and this fact would confer jurisdiction upon this Court to entertain the petition:

(i) the Registered Office of the petitioner-firm is located at Chandigarh. This fact is also evident from the address mentioned in the indents, Annexures P-1. and P-2 which were executed by the exporter-firm in favour of the petitioner for the supply of acrylic plastic scrap;

(ii) that the irrevocable documentary credit was payable by the petitioner-company through Punjab National Bank, Chandigarh, as evidenced by Annexures P-7 and P-8;

(iii) in the bills of entry, Annexures P-14 and P-15 which have been passed by respondent No. 2, the name of the petitioner-company with its office at Chandigarh is mentioned as the importers and in the relevant column, of destination of the commodity the station is mentioned as Chandigarh via Bombay;

(iv) the bond Annexure P-11 which was executed on behalf of the petitioner-company was signed and delivered by the Punjab National Bank, Sector 17, Chandigarh;

(v) that the customs duty in case of default was recoverable from the petitioner or its Bankers at Chandigarh indicating that the effect of any order passed by respondent No. 2 or the officers under his administrative control, would visit upon the petitioner at Chandigarh.

(c) Mr. Kuldip Singh, learned Counsel has placed reliance upon the ratio of a number of authorities in support of his contention that this Court would have jurisdiction to entertain the present petitions. In particular, he has cited L.V. Veeri Chettiar and Another Vs. Sales Tax Officer, Bombay, wherein the following observations were made:

"Cause of action" has always been understood as referable to the bundle of facts in a legal proceeding and if a limb of that bundle of facts is available, seen or discernible in one particular place which is a seat of the High Court, then such High Court has the power to exercise all the powers conferred on it under Article 226(1-A) notwithstanding the fact that the authority against whom the ultimate rule has to be issued and whose" act has created a cause of action as a whole or in part, is situate outside its territorial limits. The person primarily affected by the respondent issuing the notices from time to time to the petitioners and

calling upon them to produce the accounts of their business carried on in the State of Tamil Nadu and again by proposing to assess them to the best of his judgment on the assumption of certain jurisdictional facts, is the addressee of such notice and such affectation relates to the bundle of facts in the totality of the his or proceeding concerned, and such impact necessarily gives rise to a cause of action, though it may be in part.

Counsel for the petitioner drew our attention to the following observations of the Supreme Court in SLP (Civil) No. 3746 of 1984, Union of India (UOI) and Others Vs. Oswal Woollen Mills Ltd. and Others, :

Having regard to the fact that the registered office of the company is at Ludhiana and the principal respondents against whom the primary relief is sought are at New Delhi, one would have expected the writ petition to be filed either in the High Court of Punjab and Haryana or in the Delhi High Court.

It is contended on behalf of the respondents that the above is only an obiter of the Supreme Court, but it is well-settled that even an obiter of the Supreme Court is binding upon the Subordinate Courts including the High Court.

The next authority cited by the learned Counsel is Damomal Kausomal Raisinghani Vs. Union of India and Others, . The Division Bench held in this case that even assuming that the impugned order was made by the respondents at New Delhi, the effect of that order fell on the petitioner at the place which was in the jurisdiction of the Bombay High Court.

Similarly in United Electric Supply Co. Ltd. v. Industrial Tribunal (III), U.P. it was held that where the Government of U.P. passed an order of reference of an industrial dispute to the U.P. Industrial Tribunal and summons to appear before the Tribunal was served on a party residing at Calcutta, and the consequences of the order that may be passed by the Tribunal would fall upon the party in Calcutta, the Calcutta High Court had jurisdiction to issue a writ to the U.P. Government. In another case Serajuddin and Co. Vs. The State of Orissa and Others, , it was reiterated that the High Court within whose territorial jurisdiction a part of the cause of action arose would have jurisdiction to entertain the petition.

The learned Counsel for the petitioner, meeting the observations made in a contra case, i.e., Civil Writ Petition No. 2273 of 1982, decided on December 24, 1982, by a Division Bench of this Court, submitted that the said decision was distinguishable on facts because, as noticed in that judgment itself, the delivery of the goods was to be taken at Bombay and the "log entry" was also cancelled at Bombay. In the present case it is contended (that), the consignment was scheduled to be delivered at Chandigarh, though the goods were to come by shipment via Bombay. It is also submitted that it could not be the intention of the law that any dispute in respect of the payment of customs duty between the Customs Department and the importers spread all over the country, should be agitated only in the Bombay High Court.

II. Assessment illegally made under S.I.I.B. Orders

The next contention of the learned Counsel for the petitioner is that it is apparent from a perusal of the assessment order (Annexure P-10) that the assessment was made by the Assistant Collector of Customs "as per S.I.I.B. Order". Amplifying this abbreviation, it is submitted (and this fact is not controverted on behalf of the respondents) that "S.I.I.B." stands for Special Intelligence Investigating Bureau, an organisation or a cell whose function is to investigate into the alleged irregularities in matters connected with the Customs Department, which might require scrutiny. Admittedly, there is no provision either in the Customs Act or the Rules framed thereunder for the creation of such an organisation or cell. This being so, it is rightly contended by the learned Counsel that the Assistant Collector of Customs could not have passed the order of assessment merely "as per S.I.I.B. Order", as clearly mentioned in the assessment order, Annexure P-10. In support of his contention, the learned Counsel has cited a number of authorities including *Orient Paper Mills Ltd. Vs. Union of India (UOI)*, *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, and *Ahmedabad Cotton Mfg. Co. Ltd. etc. v. Union of India and Ors. AIR 1977 Guj 113*. The observations made by the Supreme Court in *Orient Paper Mills Ltd. Vs. Union of India (UOI)*, may be noticed:

If the power exercised by the Collector was a quasi-judicial power--as we hold it to be--that power cannot be controlled by the directions issued by the Board. No authority however high placed can control the decision of a judicial or a quasi-judicial authority. That is the essence of our judicial system. There is no provision in the Act empowering the Board to issue directions to the assessing authorities or the appellate authorities in the matter of deciding disputes between the persons who are called upon to pay duty and the department. It is true that the assessing authorities as well as the appellate authorities are judges in their own cause; yet when they are called upon to decide disputes arising under the Act they must act independently and impartially. They cannot be said to act independently if their judgment is controlled by the directions given by others. Then it is a misnomer to call their orders as their judgments; they would essentially be the judgments of the authority that gave the directions and which authority had given those judgments without hearing the aggrieved party.

The above observations were noticed in extenso and followed in *Ahmedabad Cotton Mfg. Co. Ltd. etc. case AIR 1977 Guj 113*. The other authorities of the Supreme Court have the same ratio.

In view of the above citations, the learned Counsel for the petitioner is *prima facie* on sound footing to contend that no other authority, especially an authority not envisaged by the statute or the rules framed thereunder, could interfere with the quasi-judicial functions to be performed by the Assistant Collector of Customs in framing the assessment. The impugned order of assessment Annexure P-10 is, thus, contended to be unsustainable under the law.

III. Provisional assessment--Illegal

The only provision under the Customs Act for the framing of provisional assessment is Section 18 of the Act. The section is reproduced for ready reference:

18. Provisional assessment of duty.--(1) Notwithstanding anything contained in this Act but without prejudice to the provisions contained in Section 46--

(a) where the proper officer is satisfied that an importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty on the imported goods or the export goods, as the case may be; or

(b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test for the purpose of assessment of duty thereon; or

(c) where the importer or the exporter has produced all the necessary documents and furnished full information for the assessment of duty but the proper officer deems it necessary to make further enquiry for assessing the duty; the proper officer may direct that the duty leviable on such goods may, pending the production of such documents or furnishing of such information or completion of such test or enquiry, be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty finally assessed and the duty provisionally assessed.

A perusal of the above provision, makes it abundantly clear that a provisional assessment, in the circumstances of the present case, could have been framed under Sub-section (c), only after the importer had been called upon to produce some document/s or furnish some information relating to the assessment of duty and after this had been done, the proper officer still deemed it necessary to make a further enquiry before finalising the assessment of duty. In so far as the present cases are concerned, it is not the case of the respondents either in their written statements or otherwise that any notice or intimation was given to the petitioner calling upon it to produce any documents or furnish any information in connection with the assessment of duty. In fact, no such order has been produced showing that the Assistant Collector had deemed it necessary to make a further enquiry before making the final assessment. The framing of provisional assessment in these circumstances was, therefore, *prima facie* not justifiable. The learned Counsel for the petitioner has placed reliance upon a direct authority on this point, *International Computers Indian Manufacturers Ltd. and Anr. v. Union of India and Ors.* 1981 ECR 403, a Division Bench decision of the Delhi High Court. The following observations in this authority are worth notice:

Provisional assessment of duty is possible only when any one or all three of the circumstances set out in Section 18 exist. There is no allegation that the petitioners were unable to produce any document or furnish any information

necessary for assessment of duty or any of the goods required and chemical or other tests to be carried out on them for the purpose of assessment of duty thereon or that the proper officer deemed it necessary to make further enquiry for assessing the duty despite the petitioners having produced all the necessary documents and furnished full information for the assessment of duty, when they cleared the goods after filing the bill of entries, etc., postulated by Section 47 of the Act.

IV. No final assessment after framing provisional assessment

Another submission made by the learned Counsel for the petitioner is that even according to the admitted case of the respondents the impugned assessment has been passed provisionally and this provisional assessment has not been finalised for the past several months in all these three cases. In the case pertaining to Civil Writ Petition No. 2791 of 1984, the impugned assessment, Annexure P-7 and P-8, indicate that the provisional assessment was framed as far back as November, 1983 and it is not controverted on behalf of the respondents that the final assessment in that case had not been made up-till date. The contention of the learned Counsel, therefore, is that the respondents are not legally competent to sit over such a provisional assessment for such a long time without finalising the same against which the petitioner would seek his statutory remedy.

V. Alternate remedy

The objection in regard to this matter was also not raised on behalf of the respondents in their written statements. On the other hand it is averred in the written statements more than once that the impugned assessment is only provisional and that the petitioner could have recourse to the statutory remedy after the final assessment is made. It is thus the case of the respondents themselves that at the present stage there was no alternative remedy available to the petitioner. Apart from this fact, in the circumstances of these cases, as noticed above, the question of alternate remedy would not arise as presently advised. Furthermore, it has been contended by the learned Counsel for the petitioner that the impugned orders are *ex facie* illegal, without jurisdiction, null and void. No appeal against such orders would, therefore, be competent u/s 128 of the Customs Act.

VI. No rules framed for valuation

Another contention of the learned Counsel is that the impugned provisional assessments made by the Customs Authorities are arbitrary and not based upon any statutory or other rules of guidance on the question of valuation. In fact the exercise of this power has been left to the absolute whim of the assessing authority. The contention, therefore, is that the action of the respondents in framing the provisional assessment should be struck down on this ground too.

It is not the scope of this Court at the motion stage to express a final opinion in regard to all the points canvassed in these writ petitions, the salient features

whereof have been noticed above. However, there is no manner of doubt that the writ petitions do require consideration and are not of such a nature that they should be thrown out in limine. Accordingly, this writ petition is admitted for final hearing.

Ad interim stay already granted shall continue till further orders.

S.P. Goyal, J.

5. It is most unfortunate and highly regrettable that I have to differ with the proposed order by my learned brother at the motion stage.

6. The glaring defect from which the petition suffers is the lack of jurisdiction of this Court to entertain this petition which is against the order of the provisional assessment u/s 18 of the Customs Act passed by the Deputy Collector of Customs. Though no grounds as such were stated in the petition to show how this Court has the jurisdiction to entertain a petition against the impugned order admittedly passed by the Deputy Collector at Bombay, yet at the time of the arguments, it was urged that a part of cause of action having arisen within its territorial jurisdiction, this Court would have the jurisdiction, to entertain this petition. In order to substantiate the contention that a part of cause of action has arisen within the territorial jurisdiction of this Court, reliance was placed on the following facts:-

(i) that the order of the provisional assessment was served on the petitioner at Chandigarh.

(ii) that the goods regarding which the customs duty has been imposed were to be delivered at Chandigarh.

(iii) that the surety bond for the payment of the duty ultimately assessed was executed in favour of the assessing authority by the petitioner at Chandigarh;

(iv) that the property of the petitioner liable to be sold in case of default is situate at Chandigarh; and

(v) that the registered office of the petitioner-company is situate in Sector 17, Chandigarh.

7. The first circumstance is factually incorrect. The petitioner-company appointed Messrs. Tulsi Dass Khem Ji as their agents for taking delivery of the imported goods and customs clearance. The goods were taken delivery of by their agents at Bombay, and the provisional assessment order was also passed in their presence. The order was thus served on the agents of the petitioner-company at Bombay which is also evident from the fact that the copy of the order produced with the petition bears the signatures of some member of the firm, Messrs. Tulsi Dass Khem Ji, Private Limited. It is, therefore, wholly incorrect to allege that the impugned order was served on the petitioner-company at Chandigarh. Even if it may be otherwise, still it would be of no consequence because the order passed by a quasi-judicial authority becomes operative the moment it is announced and

such an authority is under no obligation to communicate the order to the affected person.

8. None of the remaining four circumstances individually or collectively forms part of the cause of action. The cause of action, as held by the Privy Council in *Mohammed Khalil Khan and Ors. v. Mahbub Ali Mian and Ors.* AIR 1949 PC 78, means every fact which will be necessary for the plaintiff to prove if traversed in order to support his right to the judgment. The cause of action has no relation whatsoever to the defence that may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff. It refers to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour. In the light of this authoritative pronouncement, let now it be examined as to what are the facts which constitute the cause of action in the present case.

9. As stated above, the petitioner has come to this Court for quashing the interim assessment order of the Deputy Collector, Customs. The facts, as stated, in the petition are that the Deputy Collector has arbitrarily assessed the value of the imported goods; that the Deputy Collector has not formed his own opinion and has instead relied upon some order of the Special Intelligence Investigating Bureau (S.I.I.B.) and that the impugned order is violative of the provisions of Article 14 of the Constitution inasmuch as on earlier occasions some commodities had been cleared presumably on the value of \$240 per metric ton. None of the facts constituting these grounds has any origin within the territorial jurisdiction of this Court and as such no part of cause of action can be said to have possibly arisen within the said territory. The facts that the goods were to be taken to Chandigarh after taking delivery at Bombay; that the surety bond for the payment of the duty was executed by the petitioner at Chandigarh; that the property of the petitioner situate at Chandigarh was liable to be sold in case of default or that the registered office of the firm is situate at Chandigarh has no bearing whatsoever on the cause of action so far as the legality of the impugned order of the Deputy Collector is concerned. It is not necessary for me to discuss this matter any more in detail because it squarely stands covered by a decision of the Division Bench of this Court in Civil Writ Petition No. 2273 of 1982 (*Vedsons Steels & Wires P. Ltd. v. Bombay Port Trust Bombay and Ors.*) decided on December 24, 1982 wherein the order passed by the Bombay Port Trust authorities was sought to be challenged and the petition was dismissed on the ground that this Court had no territorial jurisdiction to entertain the same. However, it would be necessary to notice the decisions relied upon by the learned Counsel for the petitioner in support of this contention.

10. The foremost reliance was placed on a Division Bench decision of the Madras High Court in *L.V. Veeri Chettiar and Another Vs. Sales Tax Officer, Bombay*, in which the notice issued by the authorities under the Bombay Sales Tax Act functioning at Bombay was challenged in the Madras High Court which was entertained with the following observations:

"Cause of action" is the bundle of facts enabling a party to maintain a legal

proceeding. The impact on the addressee caused by a notice of a taxing authority and his proposal to assess relate to that bundle and is thus cause of action in part, for issue of a writ against taxing authority. A writ petition will, therefore, lie in the High Court of the place of the addressee even if the authority is situate outside that High Court's territorial limits.

11. With utmost respect to the learned Judges, I am unable to subscribe to this view. Service of the notice on the addressee does not form any part of the cause of action nor proposal to assess. The moment the authorities under the Sales Tax Act issued notice it became operative and effective. If the view taken by the learned Judges would be correct then in case the service of the notice is avoided and it is through citation in a newspaper, the cause of action would arise wherever the addressee happens to read that notice. Moreover, according to the rule laid down by the Privy Council noticed above, only those facts constitute the cause of action which are necessary for the plaintiff to allege and prove to get a judgment in his favour. Service of the notice at one place or the other obviously would not be required to be established by the person challenging the same. So far as the proposal to assess contained in the notice is concerned it came into being at the place where the notice was drawn and issued. On no premises, therefore, can it be said that the cause of action arises at a place where the notice proposing assessment of sales tax is served. That apart in the present case, no notice has been served on the petitioner within the territorial jurisdiction of this Court. The provisional order of the Deputy Collector was passed in the presence of the agents of the petitioner and its copy delivered to them at Bombay. On that score also this case is of no help to the petitioner.

12. In *United Province Electric Supply Co. and Ors. v. Industrial Tribunal (II) Allahabad and Ors.* 79 CWN 312, the award of the Industrial Tribunal situate in Uttar Pradesh was under challenge and the petition was entertained on the ground that both the award and the notice for recovery were served, on the petitioners at Calcutta. With utmost respect to the learned Judges, I again show my inability to subscribe to the view for the reasons recorded above. Service of the award and the notice for recovery cannot possibly constitute any part of the cause of action so far as challenge to the award is concerned. The award becomes effective not from its service but from the date on which it was made or if required to be published, from the date of its publication. Notice of recovery also would not be required to be proved for the challenge of the award. It is only in those cases where some order becomes effective only on its service on the person concerned that service of the order can be said to give rise to a part of the cause of action at a place where the order is served. So far as the judicial or quasi-judicial orders are concerned, they become effective the moment they are passed and they are not required to be served on the person affected. The execution of those orders again would be no constituent of the cause of action so far as the challenge to those orders is concerned. The decisions in *Serajuddin and Co. v. State of Orissa and Ors.* AIR and Un 1971 Cal 414 and *Provinces Electric Supply Co. Ltd. and Ors. v. Industrial Tribunal (III) Uttar Pradesh and*

Ors. 1974 Lab IC 902 proceed on similar basis and I regret my inability to follow them for the same reasons. All these cases would also be not applicable to the present case because here no notice has been served on the petitioner at any time at Chandigarh.

13. Reliance was also placed on the following observations of the Supreme Court in SLP No. 3746 of 1984, Union of India (UOI) and Others Vs. Oswal Woollen Mills Ltd. and Others, :-

Having regard to the fact that the registered office of the company is at Ludhiana and the principal respondents against whom the primary relief is sought are at New Delhi, one would have expected the writ petition to be filed either in the High Court of Punjab and Haryana or in the Delhi High Court.

14. The above observations were made while dismissing the petition which was filed in the Court at Calcutta. There is no definite opinion expressed in the above noted observations that the petition would be entertainable in the High Court of Punjab and Haryana because the company had its registered office at Ludhiana. Residence of the plaintiff or the petitioner cannot be said to form part of cause of action by any stretch of reasoning nor the residence of the plaintiff or the petitioner can give jurisdiction to the Court where he resides. No inference, therefore, can be drawn from the above observations that the Court where the Company has its registered office would have the jurisdiction to entertain the petition against the orders passed by a judicial or quasi-judicial authority outside the jurisdiction of the said Court. I am, therefore, of the considered opinion that this Court has no jurisdiction to entertain this petition and the same is liable to be dismissed on this score alone. The petition would be liable to be dismissed on another ground as well. The petitioner has ample remedy under the Customs Act. Section 128 of the Act provides that any person aggrieved by any decision or order passed under the Act by an officer of Customs lower in rank than a Collector of Customs may appeal to the Collector (Appeals) within three months from the date of the communication to him of such decision or order. The order passed by the Deputy Collector, even if it was of provisional assessment, was open to appeal under the said provision. No ground whatsoever has been alleged in the petition justifying the bypassing of the ordinary statutory remedy under the Act. It may also be noticed that even against the appellate order, there is further appeal to the Tribunal and then a reference to the High Court/Supreme Court. The remedies provided under the statute are thus quite efficacious and elaborate. The grounds urged at the time of arguments for bypassing these remedies were that the impugned order had been passed against the principle of natural justice, on extraneous considerations and without jurisdiction. None of the grounds urged, however, has any merit. The order was passed in the presence of the agents of the petitioner deputed for the custom clearance of the goods. The Deputy Collector was, therefore, under no obligation to serve any notice on the petitioner before passing that order. As regards the extraneous consideration, the argument put forward was that the order is based on the

direction of S.I.I.B. and not on the personal considerations of the Deputy Collector. Although a reference is made to some order of the S.I.I.B., but in substance what is meant thereby is that information has been gathered from the actual price of the goods in dispute determined by the State Agency. It was not disputed that the Government had power under the Act to fix prices which would govern the clearance of the goods. S.I.I.B. is an agency appointed by the Government to investigate and determine the genuine prices of the goods. As there was a vast difference between the genuine price recognised by the Government Agency and the one stated in the invoices, the Deputy Collector rightly passed a provisional assessment order, the final order to be passed after further investigation. It cannot, therefore, be said that the impugned order was passed on any extraneous consideration or without applying his own mind by the Deputy Collector.

15. As regards the jurisdiction of the Deputy Collector to pass a provisional order, it was contended that none of the three Clauses (a), (b) and (c) of Section 18 can be attracted to the present case and as such the Deputy Collector had no jurisdiction to pass any order of provisional assessment. The argument is wholly misconceived and the case is squarely covered by Clause (c) which provides: where the importer has produced all the necessary documents and furnishes full information for the assessment of duty but the proper officer deems it necessary to make further enquiry for assessing the duty, the proper officer may direct that the duty leviable on such goods may, pending the production of such documents or furnishing of such information or completion of such test or enquiry, be assessed provisionally if the importer furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty finally assessed and the duty provisionally assessed. It is in pursuance of this provision that the petitioner executed the security bond referred to above. The argument of the learned Counsel was that as there was no material before the Deputy Collector to doubt the correctness of the price mentioned in the invoice, the provisions of Clause (c) would not be attracted. The argument passes my comprehension. As already noticed above, the Deputy Collector found the price mentioned in the invoice to be incorrect in view of the price notified by the Government through S.I.I.B. He, therefore, acted within his jurisdiction in passing the provisional assessment order and requiring the petitioner to prove the genuineness of the price mentioned in the invoice.

16. The petition was liable to be dismissed still on another ground, that is, no final order having been passed, it is premature to approach this Court. The grounds urged for filing this petition at this stage were the same as were Urged for by passing the regular remedy provided under the statute. None of the grounds urged is sufficient in my view to throttle the proceedings pending before the customs authorities and entertain the petition under Article 226 of the Constitution at a stage when even the final order has not been passed by the primary authority. I, would, therefore, order the petition to be dismissed and relegate the petitioner to pursue his ordinary remedy under the Customs Act.

ORDER OF THE BENCH

17. In view of the difference of opinion, the case be laid before Hon"ble the Chief Justice for nominating a third Judge to hear the petition at the motion stage.

31.01.1985

Tewatia, J.

18. The learned Judges constituting the motion Bench dissented from each other in regard to the very question of admission of the writ petitions Nos. 2736, 2791 and 4606 of 1984 and wrote detailed considered opinions dealing with the preliminary objection pertaining to the jurisdiction of the Court and in regard to the legality of the impugned order. That is how these writ petitions came to be listed before me for motion hearing.

19. Where there could be two considered views, the matter deserves to be admitted for a detailed consideration. Therefore, the cases are admitted.

20. Since the counsel for both the parties had nothing more to say than what had been taken notice of by the two Judges in their differing opinions, therefore they agreed to the disposal of the petitions then and there, as a common question of law is involved in all these cases. Wherever reference to the facts is necessary they may be taken from Civil Writ No. 2736 of 1984.

21. The petitioner is a company registered under the Indian Companies Act, 1956, with its registered office at Chandigarh. It is alleged in the petition that Messrs. Dioglas Company Ltd., Bangkok (Tailand) through its Liaison Officer/ Indentor Mitsubishi Corporation, New Delhi, entered into a contract with the petitioner-company for the supply of 500 metric tonnes Acrylic Plastic scrap (crushed) at the rate of U.S.\$ 240 per metric ton vide indents annexures P-1 and P-2 to the writ petition; that Messrs. Khanna Enterprises of Pinjore (District Ambala) obtained two import licences from the competent authority for the import of acrylic plastic scrap (crushed), vide import licences, annexures P-3 and P-4; that the said Messrs. Khanna Enterprises appointed the petitioner-company as their agent for the purpose of importing the above mentioned commodity by means of two authority letters, annexures P-5 and P-6; that the petitioner-company opened an irrevocable documentary credit for U.S. \$61390 with the Punjab National Bank, Chandigarh, as per letters of credit, copies annexures P-7 and P-8; and that a consignment of 69 M.T. of acrylic plastic scrap (crushed) was despatched for the petitioner-company by shipment on April 19, 1984, in pursuance of the indents, annexures P-1 and P-2, at the price and the rate mentioned in the said documents, that is, U.S. \$240 per metric ton. It is further alleged that the Collector of Customs, Bombay, respondent No. 2, instead of accepting the value as mentioned in the invoice for the purposes of levying customs duty, arbitrarily and without notice to the petitioner-company, calculated the original value of the commodity at the rate of U.S. \$475 per metric ton and levied customs duty on the said enhanced value, vide the impugned order,

annexure P-10, and called upon, vide the said order, to pay Rs. 4,25,281 more by way of customs duty. He ordered the petitioner-company to deposit in cash Rs. 85,056.32 on account of 20% of the customs duty and for the remaining amount required the petitioner-company to execute a bond, Annexure P-11. The petitioner-company had thus to pay 20% of the customs duty and execute the bond in order to avoid payment of huge demurrage. The petitioner-company has challenged the action of the Collector of Customs at this very stage fearing that the subsequent consignments too may be subjected to the customs duty in the same manner.

22. Before the motion Bench, a preliminary objection was taken on behalf of the respondents to the jurisdiction of this Court to entertain the petition. It was claimed that the Bombay High Court alone had the jurisdiction in the matter, that the Assistant Collector of Customs had passed a provisional order and, therefore, the writ petition was premature, and that in any case the petitioner-company should have exhausted the remedy under the statute against the impugned provisional order.

23. As is apparent from the dissenting opinions of the Judges, who first heard the case at the time of the motion hearing, the petitioner-company impugned the order of the Assistant Collector of Customs on two grounds (1) that the impugned order had been passed without calling upon the petitioner-company to produce any document or information, and (2) that the impugned order had been passed by the Assistant Collector of Customs on a direction of an outside authority, and therefore, in the eyes of law, the impugned order could not be considered to be the order of the said officer.

24. In regard to the preliminary objection regarding jurisdiction, Surinder Singh, J., expressed the view in the following words:

The question as to whether this Court has territorial jurisdiction to entertain the writ petitions or not, cropped up for consideration during the course of arguments and as already observed, no such objection was raised on behalf of the respondents in this respect. Mr. Kuldip Singh, learned Counsel for the petitioner, has contended that the jurisdiction of this Court is not ousted merely because the office of respondent No. 2, whose order of assessment is challenged in these writ petitions, is located at Bombay. The learned Counsel has highlighted the following points to support his contention that the Court has the jurisdiction to entertain the petitions:

(a) Article 226(2) of the Constitution of India provides that "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."

(b) The following circumstances, according to the learned Counsel are a pointer

to the fact that the cause of action partly, if not wholly, has arisen at Chandigarh, which is the seat of this Court and this fact would confer jurisdiction upon this Court to entertain the petition:

(i) the registered office of the petitioner-firm is located at Chandigarh. This fact is also evident from the address mentioned in the indents, annexures P-1 and P-2, which were executed by the exporter-firm in favour of the petitioner for the supply of acrylic plastic scrap;

(ii) that the irrevocable documentary credit was payable by the petitioner-company through the Punjab National Bank, Chandigarh as evidenced by annexures P-7 and P-8;

(iii) in the bills of entry, annexures P-14 and P-15 which have been passed by respondent No. 2, the name of the petitioner-company with its office at Chandigarh is mentioned as the importers and in the relevant column, the station of destination of the commodity is mentioned as "Chandigarh via Bombay";

(iv) the bond annexure P-11 which was executed on behalf of the petitioner-company was signed and delivered by the Punjab National Bank, Sector 17, Chandigarh;

(v) that the customs duty in case of default was recoverable from the petitioner or their bankers at Chandigarh indicating that the effect of any order passed by respondent No. 2 or the officers under his administrative control, would visit upon the petitioner at Chandigarh.

(c) Mr. Kuldip Singh, learned Counsel, has placed reliance upon the ratio of a number of authorities in support of his contention that this Court would have jurisdiction to entertain the present petitions. In particular, he has cited L.V. Veeri Chettiar and Another Vs. Sales Tax Officer, Bombay, , wherein the following observations were made:

"Cause of action" has always been understood as referable to the bundle of facts in a legal proceeding and if a limb of that bundle of facts is available, seen or discernible in one particular place which is a seat of the High Court, then such High Court has the power to exercise all the powers conferred on it under Article 226(1-A) notwithstanding the fact that the authority against whom the ultimate rule has to be issued and whose act has created a cause of action as a whole or in part, is situate outside its territorial limits. The person primarily affected by respondent issuing the notices from time to time to the petitioners and calling upon them to produce the accounts of their business carried on in the State of Tamil Nadu and again by proposing to assess them to the best of his judgment on the assumption of certain jurisdictional facts, is the addressee of such notice and such affectation relates to the bundle of facts in the totality of the lis or proceeding concerned, and such impact necessarily gives rise to a cause of action, though it may be in part.

Counsel for the petitioner drew our attention to the following observations of the

Supreme Court in SLP (Civil) No. 3746 of 1984, Union of India (UOI) and Others Vs. Oswal Woollen Mills Ltd. and Others, :

Having regard to the fact that the registered office of the company is at Ludhiana and the principal respondents against whom the primary relief is sought are at New Delhi, one would have expected the writ petition to be filed either in the High Court of Punjab and Haryana or in the Delhi High Court.

It is contended on behalf of the respondents that the above is only an obiter of the Supreme Court, but it is well-settled that even an obiter of the Supreme Court is binding upon the Subordinate Courts including the High Court.

The next authority cited by the learned Counsel is Damomal Kausomal Raisinghani Vs. Union of India and Others, . The Division Bench held in this case that even assuming that the impugned order was made by the respondents at New Delhi, the effect of that order fell on the petitioner at the place which was in the jurisdiction of the Bombay High Court.

Similarly in United Electric Supply Co. Ltd. v. Industrial Tribunal (III), U.P. and Ors. it was held that where the Government of U.P. passed an order of reference of an industrial dispute to the U.P.-Industrial Tribunal and summons to appear before the Tribunal was served on a party residing at Calcutta, and the consequences of the order that may be passed by the Tribunal would fall upon the party in Calcutta, the Calcutta High Court had jurisdiction to issue a writ to the U. P. Government. In another case, Serajuddin and Co. Vs. The State of Orissa and Others, , it was reiterated that the High Court within whose territorial jurisdiction a part of the cause of action arose would have jurisdiction to entertain the petition.

The learned Counsel for the petitioner, meeting the observations made in a contra case, i.e., Civil Writ Petition No. 2273 of 1982, decided on December 24, 1982, by a Division Bench of this Court, submitted that the said decision was distinguishable on facts because, as noticed in that judgment itself, the delivery of the goods was to be taken at Bombay and the "log entry" was also cancelled at Bombay. In the present case it is contended, the consignment was scheduled to be delivered at Chandigarh, though the goods were to come by shipment via Bombay. It is also submitted that it could not be the intention of the law that any dispute in respect of the payment of customs duty between the Customs Department and the importers spread all over the country, should be agitated only in Bombay High Court.

25. Goyal, J., in his differing opinion, put the contrary view in regard to the said preliminary objection in the following words:

The glaring defect from which the petition suffers is the lack of jurisdiction of this Court to entertain this petition which is against the order of the provisional assessment u/s 18 of the Customs Act passed by the Deputy Collector of Customs. Though no grounds as such were stated in the petition to show how

this Court has the jurisdiction to entertain a petition against the impugned order admittedly passed by the Deputy Collector at Bombay, yet at the time of the arguments, it was urged that a part of cause of action having arisen within its territorial jurisdiction, this Court would have the jurisdiction to entertain this petition. In order to substantiate the contention that a part of cause of action has arisen within the territorial jurisdiction of this Court, reliance was placed on the following facts:

- (i) that the order of the provisional assessment was served on the petitioner at Chandigarh;
- (ii) that the goods regarding which the customs duty has been imposed were to be delivered at Chandigarh;
- (iii) that the surety bond for the payment of the duty ultimately assessed was executed in favour of the assessing authority by the petitioner at Chandigarh;
- (iv) that the property of the petitioner liable to be sold in case of default is situate at Chandigarh; and
- (v) that the registered office of the petitioner-company is situate in Sector 17, Chandigarh.

The first circumstance is factually incorrect. The petitioner-company appointed Messrs. Tulsi Dass Khem Ji as their agents for taking delivery of the imported goods and customs clearance. The goods were taken delivery of by their agents at Bombay, and the provisional assessment order was also passed in their presence. The order was thus served on the agents of the petitioner-company at Bombay, which is also evident from the fact that the copy of the order produced with the petition bears the signatures of some member of the firm, Messrs. Tulsi Dass Khem Ji Private Limited. It is, therefore, wholly incorrect to allege that the impugned order was served on the petitioner-company at Chandigarh. Even if it may be otherwise, still it would be of no consequence because the order passed by a quasi-judicial authority becomes operative the moment it is announced and such an authority is under no obligation to communicate the order to the affected person.

None of the remaining four circumstances individually or collectively forms part of the cause of action. The cause of action, as held by the Privy Council in *Mohammad Khalil Khan and Ors. v. Mahbub Ali Mian and Ors.* AIR 1949 PC 78, means every fact which will be necessary for the plaintiff to prove if traversed in order to support his right to the judgment. The cause of action has no relation whatsoever to the defence that may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff. It refers to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour. In the light of this authoritative pronouncement, let it now be examined as to what are the facts which constitute the cause of action in the present case.

As stated above, the petitioner has come to this Court for quashing the interim

assessment order of the Deputy Collector, Customs. The facts, as stated, in the petition are that the Deputy Collector has arbitrarily assessed the value of the imported goods; that the Deputy Collector has not formed his own opinion and has instead relied upon some order of the Special Intelligence Investigating Bureau (S.I.I.B.) and that the impugned order is violative of the provisions of Article 14 of the Constitution inasmuch as on earlier occasions some commodities had been cleared presumably on the value of \$ 240 per metric ton. None of the facts constituting these grounds has any origin within the territorial jurisdiction of this Court and as such no part of cause of action can be said to have possibly arisen within the said territory. The facts that the goods were to be taken to Chandigarh after taking delivery at Bombay; that the surety bond for the payment of the duty was executed by the petitioner at Chandigarh; that the property of the petitioner situate at Chandigarh was liable to be sold in case of default or that the registered office of the firm is situate at Chandigarh has no bearing whatsoever on the cause of action so far as the legality of the impugned order of the Deputy Collector is concerned. It is not necessary for me to discuss this matter any more in detail because it squarely stands covered by a decision of the Division Bench of this Court in Civil Writ Petition No. 2273 of 1982 (*Vedsons Steels & Wires P. Ltd. v. Bombay Port Trust, Bombay and Ors.*) decided on December 24, 1982 wherein the order passed by the Bombay Port Trust authorities was sought to be challenged and the petition was dismissed on the ground that this Court had no territorial jurisdiction to entertain the same. However, it would be necessary to notice the decisions relied upon by the learned Counsel for the petitioner in support of his contention.

The foremost reliance was placed on a Division Bench decision of the Madras High Court in *L.V. Veeri Chettiar and Another Vs. Sales Tax Officer, Bombay*, in which the notice issued by the authorities under the Bombay Sales Tax Act functioning at Bombay was challenged in the Madras High Court which was entertained with the following observations:

"Cause of action" is the bundle of facts enabling a party to maintain a legal proceeding. The impact on the addressee caused by a notice of a taxing authority and his proposal to assess relate to that bundle and is thus cause of action in part, for issue of a writ against taxing authority. A writ petition will, therefore, lie in the High Court of the place of the addressee even if the authority is situate outside that High Court's territorial limits.

With utmost respect to the learned Judges, I am unable to subscribe to this view. Service of the notice on the addressee does not form any part of the cause of action nor proposal to assess. The moment the authorities under the Sales Tax Act issued notice it became operative and effective. If the view taken by the learned Judges would be correct then in case the service of the notice is avoided and it is through citation in a newspaper, the cause of action would arise wherever the addressee happens to read that notice. Moreover, according to the rule laid down by the Privy Council noticed above, only those facts constitute the

cause of action which are necessary for the plaintiff to allege and prove to get a judgment in his favour. Service of the notice at one place or the other obviously would not be required to be established by the person challenging the same. So far as the proposal to assess contained in the notice is concerned it came into being at the place where the notice was drawn and issued. On no premises, therefore, can it be said that the cause of action arises at a place where the notice proposing assessment of sales tax is served. That apart in the present case, no notice has been served on the petitioner within the territorial jurisdiction of this Court. The provisional order of the Deputy Collector was passed in the presence of the agents of the petitioner and its copy delivered to them at Bombay. On that score also this case is of no help to the petitioner.

In *United Province Electric Supply Co. and Ors. v. Industrial Tribunal (III) Allahabad and Ors.* 79 Calcutta Weekly Notes 312, the award of the Industrial Tribunal situate in Uttar Pradesh was under challenge and the petition was entertained on the ground that both the award and the notice for recovery were served on the petitioners at Calcutta. With utmost respect to the learned Judges, I again show my inability to subscribe to the view for the reasons recorded above. Service of the award and the notice for recovery cannot possibly constitute any part of the cause of action so far as challenge to the award is concerned. The award becomes effective not from its service but from the date on which it was made or if required to be published, from the date of its publication. Notice of recovery also would not be required to be proved for the challenge of the award. It is only in those cases where some order becomes effective only on its service on the person concerned that service of order can be said to give rise to a part of the cause of action at a place where the order is served. So far as the judicial or quasi-judicial orders are concerned, they become effective the moment they are passed and they are not required to be served on the person affected. The execution of those orders again would be no constituent of the cause of action so far as the challenge to those orders is concerned. The decisions in *Serajuddin and Co. v. The State of Orissa and Ors.* AIR 1971 Cal 414 and *United Provinces Electric Supply Co. Ltd. and Ors. v. Industrial Tribunal (III) Uttar Pradesh and Ors.* 1974 Lab I C 902 proceed on similar basis and I regret my inability to follow them for the same reasons. All these cases would also be not applicable to the present case because here no notice has been served on the petitioner at any time at Chandigarh.

Reliance was also placed on the following observations of the Supreme Court in SLP No. 3746 of 1984 *Union of India (UOI) and Others Vs. Oswal Woollen Mills Ltd. and Others*, :

"Having regard to the fact that the registered office of the company is at Ludhiana and the principal respondents against whom the primary relief is sought are at New Delhi, one would have expected the writ petition to be filed either in the High Court of Punjab and Haryana or in the Delhi High Court."

The above observations were made while dismissing the petition which was filed

in the Court at Calcutta. There is no definite opinion expressed in the above noted observations that the petition would be entertainable in the High Court of Punjab and Haryana because the company had its registered office at Ludhiana. Residence of the plaintiff or the petitioner cannot be said to form part of cause of action by any stretch of reasoning nor the residence of the plaintiff or the petitioner can give jurisdiction to the Court where he resides. No inference, therefore, can be drawn from the above observations that the Court where the Company has its registered office would have the jurisdiction to entertain the petition against the orders passed by a judicial or quasi-judicial authority outside the jurisdiction of the said Court. I am, therefore, of the considered opinion that this Court has no jurisdiction to entertain this petition and the same is liable to be dismissed on this score alone.

26. With respect, I entirely concur in the view that Goyal, J., has taken and hold that this Court has no jurisdiction to entertain this petition.

27. As regards the merit of the impugned action of the Assistant Collector of Customs, it may be observed that none of the grounds on which the action has been impugned by the petitioner-company is of any avail to it. In order to assess the merits of the first ground, it would be first necessary to notice the relevant provisions of Section 18 of the Customs Act, which are in the following terms:

18. Provisional assessment of duty.--(1) Notwithstanding anything contained in this Act but without prejudice to the provisions contained in Section 46--

* * * * (c) where the importer or the exporter has produced all the necessary documents and furnished full information for the assessment of duty but the proper officer deems it necessary to make further enquiry for assessing the duty;

the proper officer may direct that the duty leviable on such goods may, pending the production of such documents or furnishing of such information or completion of such test or enquiry, be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security, as the proper officer deems fit for the payment of the deficiency, if any, between the duty finally assessed and the duty provisionally assessed.

28. A perusal of Clause (c) would show that it in express terms provides for the passing of the provisional order pending the production, inter alia, of any documents or information which an importer or exporter may have in his possession. In other words, Clause (c) of Section 18 of the Act envisages production of all documents and full information and completion of any test or enquiry only for the purpose of passing of the final order and not for the purpose of passing the provisional order, and therefore, it cannot be said that the provisional order is bad, because it had been passed without first calling upon the petitioner-company to supply requisite documents or full information. It may, however, be added that before passing the provisional order in question, the agents of the petitioner-company, who were authorised to take delivery, were duly heard.

29. As regards the second ground that the impugned order had been passed on the direction of an outside authority, it may be observed that this assertion is based on a misconception of the expression "as per S.I.I.B. order" occurring in annexure P-10. The said expression has been sought to be construed on behalf of the petitioner-company to mean that the impugned order had been passed under the order of "S.I.I.B." The expression "S.I.I.B." stands for "Special Intelligence Investigating Bureau"--an organisation whose function is to investigate and determine the genuine prices of the imported goods. It is not uncommon that the importers indulge in under-invoicing, and therefore, the said organisation tries to keep itself abreast of the prevailing prices of goods in the countries from where these are imported and furnish such information to the Collector of Customs, as and when required, to enable him to assess the correct value of the goods imported. The action of the Assistant Collector of Customs provisionally basing himself on such information supplied by "S.I.I.B." cannot be held out to be illegal. The Assistant Collector of Customs in this regard cannot be said to have abdicated his functions and authority to "S.I.I.B." Hence, I hold that the impugned order of the Assistant Collector of Customs is perfectly legal and has been passed in accordance with law.

30. For the reasons above stated, these three writ petitions deserve to be dismissed both on the grounds that this Court had no jurisdiction to entertain them, as also on the ground that the impugned order does not suffer from any legal infirmity. I order accordingly, The petitioner-company shall pay Rs. 500 by way of costs to respondent No. 2 in each petition.