

CASE NO.:
Appeal (civil) 5153 of 2007

PETITIONER:
M/s Canon Steels P. Ltd

RESPONDENT:
Commissioner of Customs

DATE OF JUDGMENT: 12/11/2007

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 5153 OF 2007
Arising out of SLP (Civil) No.7645 of 2007

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the orders passed by the Punjab & Haryana High Court dismissing the Customs Act Appeal No.4/2004, filed under Section 130 of the Customs Act, 1962 (in short the 'Act') dated 8th May, 2006, and the order passed in review application dated 12.10.2006. The High Court held that it had no jurisdiction to deal with the matter as the original order was passed by Adjudicating authority at Mumbai and the appellate order was passed at Delhi by the Customs, Excise and Service Tax Appellate Tribunal (in short 'CESTAT'). Reference was made to the decision of this Court in Kusum Ingots & Alloys Ltd. V. Union of India and Anr. (2004 (6) SCC 254).

3. In support of the appeal, learned counsel for the appellant submitted that the judgment in Kusum Ingots (supra) is in favour of the appellant and on misreading of the decision the appeal has been dismissed. Learned Additional Solicitor General, on the other hand, submitted that before moving the Punjab and Haryana High Court, the Delhi High Court was moved, and at the request of the appellant, the High Court permitted to withdraw the appeal (wrongly stated as writ petition).

4. The factual position is not in dispute. The adjudication order under the Act was passed by the Commissioner of Customs (EP Mumbai) and the appeal against that order was adjudicated by CESTAT. Against the order of CESTAT, Customs Appeal No.6/04 was filed before the Delhi High Court. It is submitted by learned counsel for the appellant that prima facie, the High Court was of the view that the appeal was not maintainable before it and, therefore, the appellant withdrew the said appeal to file it before the appropriate High Court. Since the cause of action arose at Chandigarh it was submitted that the Punjab and Haryana High Court has jurisdiction.

5. At this juncture, it would be appropriate to take note of what has been stated by this Court in Kusum Ingots (supra).

6. The Court must have the requisite territorial jurisdiction.

An order passed on a writ petition questioning the constitutionality of a Parliamentary Act, whether interim or final keeping in view the provisions contained in clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act.

7. Learned counsel for the appellant in support of his argument would contend that the situs of framing law or rule would give jurisdiction to the Delhi High Court and in support of the said contention relied upon the decisions of this Court in *Nasiruddin v. STAT* (1975 (2) SCC 671), and *U.P. Rashtriya Chini Mill Adhikari Parishad v. State of U.P.* (1995 (4) SCC 738). So far as the decision of this Court in *Nasiruddin's* case (supra) is concerned, it is not an authority for the proposition that the situs of legislature of a State or the authority in power to make subordinate legislation or issue a notification would confer power or jurisdiction on the High Court or a Bench of the High Court to entertain a petition under Article 226 of the Constitution. In fact, this Court while construing the provisions of the United Provinces High Courts (Amalgamation) Order, 1948 stated the law thus: (SCC p. 683, para 37)

"37 . The conclusion as well as the reasoning of the High Court is incorrect. It is unsound because the expression 'cause of action' in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow then Lucknow would have jurisdiction though the original order was passed at a place outside the areas in Oudh. It may be that the original order was in favour of the person applying for a writ. In such case an adverse appellate order might be the cause of action. The expression 'cause of action' is well known. If the cause of action arises wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified Oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in Oudh it would be open to the litigant who is the dominus litis to have his forum conveniens. The litigant has the right to go to a court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular court. The choice is by reason of the jurisdiction of the court being attracted by part of cause of action arising within the jurisdiction of the court. Similarly, if the cause of action can be said to have arisen part within specified areas in Oudh and part outside the specified Oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Lucknow. The court will find out in each case whether the jurisdiction of the court is rightly attracted by the alleged cause of action."

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 to 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 invoking the doctrine of forum conveniens. [See Bhagat Singh Bugga v. Dewan Jagbir Sawhney (AIR 1941 Cal 670), Madanlal Jalan v. Madanlal (AIR 1949 Cal 495), Bharat Coking Coal Ltd. v. Jharia Talkies & 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).]

10. The appellate order in this case was issued from CESTAT office at New Delhi. In that sense the Delhi High Court has jurisdiction to deal with the matter in terms of what has been stated in paragraph 25 of Kusum Ingot's case (supra).

11. The Punjab & Haryana High Court was justified in its view as the original adjudication order and the appellate order were not issued by any authority within its territorial jurisdiction. But no person should be left without a remedy, therefore, even though the Customs Case No.6/04 was withdrawn by the assessee, we direct the restoration of the said as undisputably, the Delhi High Court has jurisdiction to deal with the matter.

12. Customs Case No.6/04 in the Delhi High Court needless to say shall be dealt with on merits.

13. We make it clear that we have not expressed any opinion on the merits of the appeal.

14. The appeal is accordingly disposed of without any order as to costs.