Case Citation: (2017) taxcode.in 351 SC

CASE NO.:
Appeal (civil) 2749 of 2007

PETITIONER:
M/s. Ambica Industries

RESPONDENT:
Commissioner of Central Excise

DATE OF JUDGMENT: 18/05/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 2749 2007
[Arising out of S.L.P. (C) No. 18405 of 2006]
WITH
CIVIL APPEAL NO. 2750/2007 @ S.L.P.(C)No. 18822 of 2006
CIVIL APPEAL NO. 2751/2007 @ S.L.P.(C)No. 18956 of 2006

S.B. SINHA, J.

1. Leave granted.
2. The issue which arises for our consideration in these appeals relates to determination of situs of the High Court in which appeals would lie under Section 35G(1) of the Central Excise Act.
3. Appellant herein carries on business at Lucknow. It was assessed at the said place. The matter, however, ultimately came up before Central Excise and Service Tax Appellate Tribunal (CESTAT), New Delhi in Appeal No.E/2792/02-NBC. The said Tribunal exercises jurisdiction in respect of cases arising within the territorial limits of the State of Uttar Pradesh, National Capital Territory of Delhi and the State of Maharashtra.
4. Having regard to the situs of the Tribunal, an appeal in terms of Section 35G of the Central Excise Act, 1944 was filed before the Delhi High Court. A Division Bench of the said Court relying on or on the basis of an earlier Division Bench judgment in Bombay Snuff Pvt. Ltd. Vs. Union of India 2006 (194) ELT 264 opined that it had no territorial jurisdiction in the matter.
5. Mr. C. Hari Shankar, learned counsel appearing on behalf of the appellant would submit that despite the fact that sub-section (9) of Section 35G of the Act was brought to the notice of the High Court, the court refused to consider the effect thereof in determining the question of its jurisdiction. Had the said provision been taken into consideration for determination of the issue, it was possible to hold that its decision in Bombay Snuff (supra) had been rendered per incurium. Referring to the development of law governing the field, by reason of the amendment carried out by Parliament in the said Act as also other pari materia statutes, the learned counsel would submit that the High Court was wrong in arriving at the said conclusion.
6. Mr. G.E. Vahanvati, learned Solicitor General of India, on the other hand, would submit that the term 'cause of action' applicable in relation to a suit or a writ petition before the High Court having regard to clause 2 of Article 226 of the Constitution of India cannot be the basis for determining the situs of the High Court to which an appeal shall lie under section 35G of the Act. It was submitted that the situs of the Assessing Officer would be the determinative factor for the High Court to exercise its territorial jurisdiction in entertaining appeal thereunder and not the situs of the Tribunal alone.
7. We may, at the outset, notice some provisions of the Act which are relevant for our purpose:-
"35G. Appeal to High Court \026

www.taxcode.in

Case Citation: (2017) taxcode.in 351 SC

(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.
(2) The Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be---
(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908(5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section."

8. In terms of the said provision, the questions involving "rate of duty of excise or the value of the goods" may be subjected to an appeal before the High Court, subject of course to its satisfaction that the matter involves a substantial question of law. Sub-section (9) of Section 35G, prior to 1999, provided for application of the procedure of Code of Civil Procedure, 1908 mutatis mutandis to the appeals to the High Courts, recourse to which could be taken for challenging the final orders of the Tribunal before the High Court. Post 1999, two provisions, namely, Section 35G and Section 35H were made available, the relevant provisions whereof are as under :-
"35G. Statement of case to High Court.--
(1) The Commissioner of Central Excise or the other party may, within sixty days of the date upon which he is served with notice of an order under section 35C passed before the 1st day of July, 1999 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), by application in the prescribed form, accompanied, where the application is made by the other party, by a fee of two hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this section, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court:
Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period herein before specified, allow it to be presented within a further period not exceeding thirty days\005"

9. The Finance Act of 2003, however, did away with the remedy of reference to the High Court, altogether, except in the case of final orders passed by the Tribunal on or before 1.7.2003. Final orders passed after the said date by reason of Section 144 of the Finance Act, 2003 were made appealable to the High Court under an entirely substituted Section 35G, whereas Section 145 of the Finance Act, 2003, amended Section 35H of the Act to restrict its applicability to Final Orders passed after 1.7.2003. Section 35H as amended reads as under :-
"35H. Application to High Court.--
(1) The Commissioner of Central Excise or the other party may, within one hundred and eighty

www.taxcode.in

Case Citation: (2017) taxcode.in 351 SC

days of the date upon which he is served with notice of an order under section 35C passed * [before the 1st day of July, 2003] (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), by application in the prescribed form, accompanied, where the application is made by the other party, by a fee of two hundred rupees, apply to the High Court to direct the Appellate Tribunal to refer to the High Court any question of law arising from such order of the Tribunal.

(2) The Commissioner of Central Excise or the other party applying to the High Court under sub-section (1) shall clearly state the question of law which he seeks to be referred to the High Court and shall also specify the paragraph in the order of the Appellate Tribunal relevant to the question sought to be referred.

(3) On receipt of notice that an application has been made under sub-section (1), the person against whom such application has been made, may, notwithstanding that he may not have filed such application, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in the prescribed manner against any part of the order in relation to which an application for reference has been made and such memorandum shall be disposed of by the High Court as if it were an application presented within the time specified in sub-section (1).

(4) If, on an application made under sub-section (1), the High Court directs the Appellate Tribunal to refer the question of law raised in the application, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such direction, draw up a statement of the case and refer it to the High Court."

10. Similar problems have arisen in respect of the decisions rendered by Tribunals constituted under different Acts, for example Income Tax Act. We are also not unmindful of a catena of decisions rendered by some High Courts that situs of the Tribunal is the determinative factor for reference and/or appeal before the High Court.

11. The question incidentally came up for consideration before a 5 Judge Bench of this Court in Nasiruddin Vs. S.T.A. Tribunal AIR 1976 SC 331 wherein, inter alia, it was held :-

"37. To sum up, our conclusions are as follows. First, there is no permanent seat of the High Court at Allahabad. The seats at Allahabad and at Lucknow may be changed in accordance with the provisions of the Order. Second, the Chief Justice of the High Court has no power to increase or decrease the areas in Oudh from time to time. The areas in Oudh have been determined once by the Chief Justice and, therefore, there is no scope for changing the areas. Third, the Chief Justice has power under the second proviso to paragraph 14 of the Order to direct in his discretion that any case or class of cases arising in Oudh areas shall be heard at Allahabad. Any case or class of cases are those which are instituted at Lucknow. The interpretation given by the High Court that the word "heard" confers powers on the Chief Justice to order that any case or class of cases arising in

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Case Citation: (2017) taxcode.in 351 SC

Oudh areas shall be instituted or filed at Allahabad instead of Lucknow is wrong. The word "heard" means that cases which have already been instituted or filed at Lucknow may in the discretion of the Chief Justice under the second proviso to paragraph 14 of the Order be directed to be heard at Allahabad. Fourth, the expression "cause of action" with regard to a civil matter means that it should be left to the litigant to institute cases at Lucknow Bench or at Allahabad Bench according to the cause of action arising wholly or in part within either of the areas. If the cause of action arises wholly within Oudh areas then the Lucknow Bench will have jurisdiction. Similarly, if the cause of action arises wholly outside the specified areas in Oudh then Allahabad will have jurisdiction. If the cause of action in part arises in the specified Oudh areas and part of the cause of action arises outside the specified areas, it will be open to the litigant to frame the case appropriately to attract the jurisdiction either at Lucknow or at Allahabad. Fifth, a criminal case arises where the offence has been committed or otherwise as provided in the Criminal Proceduce Code. That will attract the jurisdiction of the Court at Allahabad or Lucknow. In some cases depending on the facts and the provision regarding jurisdiction, it may arise in either place."

12. The said decision proceeded on the basis that part of the cause of action may arise at the forum where the appellate order or the revisional order is sourced. If, thus, a cause of action arises within one or the other High Court, the petitioner shall be the dominus litis. Indisputably, if this set of reasoning is to be accepted, the impugned judgment as also the decision rendered in Bombay Snuff (supra) would not be correct. Before dilating on the said proposition of law it may be noticed that the decision of a Tribunal would be binding on the Assessing Authority. If the situs of the appellate Tribunal should be considered to be the determinative factor, a decision rendered by the Tribunal shall be binding on all the authorities exercising its jurisdiction under the said Tribunal.

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

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

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

16. Sub-section 9 of Section 35G, whereupon Mr. C. Hari Shankar,

www.taxcode.in

Case Citation: (2017) taxcode.in 351 SC

learned counsel places strong reliance, in our opinion, does not answer the question placed before us. Learned counsel contends that in terms of sub-section 1 of Section 100 of the Code of Civil Procedure, the order of the First Appellate Court being a decree, a Second Appeal shall lie before the High Court subordinate thereto.

17. There cannot be any doubt whatsoever that in terms of Article 227 of the Constitution of India as also Clause (2) of Article 226 thereof, the High Court would exercise its discretionary jurisdiction as also power to issue writ of certiorari in respect of the orders passed by the Subordinate Courts within its territorial jurisdiction or if any cause of action has arisen therewithin but the same tests cannot be applied when the appellate court exercises a jurisdiction over Tribunal situated in more than one State. In such a situation, in our opinion, the High Court situated in the State where the first court is located should be considered to be the appropriate appellate authority. Code of Civil Procedure did not contemplate such a situation. It provides for jurisdiction of each court. Even a District Judge must exercise its jurisdiction only within the territorial limits of a State. It is inconceivable under the Code of Civil Procedure that the jurisdiction of the District Court would be exercisable beyond the territorial jurisdiction of the District, save and except in such matters where the law specifically provides therefor.

18. The submission of Mr. C. Hari Shankar, learned counsel, as noticed hereinbefore, is inconsistent and contradictory. The doctrine of dominus litus or doctrine of situs of the Appellate Tribunal do not go together. Dominus litus indicates that the suitor has more than one option, whereas the situs of an Appellate Tribunal refers to only one High Court wherein the appeal can be preferred. We may consider two hypothetical cases in order to enable us to find out an answer. A Tribunal may hear out a matter either at Allahabad or at Bombay and pass a judgment at that place. Only because the head office is situated at Delhi, would it mean that a judgment delivered at Allahabad or at Bombay would not attain its finality then and there.

19. We may notice some incongruities if the contention of the appellant is taken to its logical conclusion. It is possible that in a case of emergency while the Tribunal holding its sitting at Allahabad or Bombay may entertain a matter where the cause of action had arisen at Delhi. But that would not mean that when the Tribunal pronounces its judgment at Allahabad or Bombay, although the cause of action had initially arisen at Delhi, the Delhi High Court would have no jurisdiction in relation thereto.

20. The situs of a Tribunal may vary from time to time. It could be Delhi or some other place. Whether its jurisdiction would be extending to 3 States or more or less would depend upon the Executive order which may be issued. Determination of the jurisdiction of a High Court on the touchstone of Sections 35G and 35H of the Act, in our opinion, should be considered only on the basis of statutory provisions and not anything else. While defining High Court in terms of Section 36B of the Act, the Parliament never, in our opinion, contemplated to have a situation of this nature.

21. An appeal may have to be filed by the Commissioner of Central Excise. His office may be located in a different State. If he has to prefer an appeal before the High Court, he would be put to a great inconvenience whereas, the assessee would not be.

22. We may, keeping in view the aforementioned backdrop, notice a few decisions. In Commissioner of Income Tax, Madras Vs. S. Sivaramakrishna Iyer [AIR 1969 Mad 300], it was held :-

"On that view, we think that where a Tribunal has jurisdiction over more States than one, and it has got to make a choice, in the absence of a statutory provision, relating to the matter it must be guided by the principles of Section 64, that is to say, the place where the assessee carries on his business, profession or vocation or resides. On that test, it is the High Court of Kerala which will have jurisdiction. There is also another approach to the question, namely, the subject-matter test As we mentioned, the penalty proceedings were originally initiated by the Income-tax Officer at Trichur and it was because of a directive by Section 274(2) he

www.taxcode.in

Case Citation: (2017) taxcode.in 351 SC

made a reference to the Inspecting Assistant Commissioner. But in effect, as we think, the penalty proceedings are but a continuation of the original assessment orders and the subsequent proceedings started by the Income-tax Officer at Trichur for levy of penalty. On that basis too, we are inclined to think that this court will have no jurisdiction under Section 66(2)."

23. A Division Bench of Delhi High Court in Seth Banarsi Dass Gupta Vs. Commissioner of Income Tax, 1978 (11) DLT 14, while construing Section 66 of the Income Tax Act, 1922, held as under :-

"The question then arises as to which High Court the Delhi Bench could refer the questions of law proposed in the applications under section 66(1) of the Act.

The only relevant provisions in the Act are those in Section 66. Section 66(1) merely states that within the time mentioned therein, the assessee or the Commissioner may require the Appellate Tribunal to refer to "the High Court" any question of law arising out of an order under Section 33, and that the Appellate Tribunal shall within the time prescribed in the sub-section draw up a statement of case and refer the question to "the High Court" Section 66(2) provides that if the Appellate Tribunal refuses to state a case on an application under Section 66(1) on the ground that no question of law arises, the assessee or the Commissioner, as the case maybe, may, within the time mentioned in the sub-section, apply to "the High Court", and "the High Court" if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and refer it. Section 66(8) provides that for the purposes of Section ' 66, "the High Court" means - (a) in relation to any State, the High Court of the State, and (b) in relations to the Union Territory of Delhi, the High Court of Delhi.

The aforesaid provisions do not clearly indicate to which particular High Court the Appellate Tribunal has to make a reference under Section 66(1) or which High Court can call for a reference under Section 66(2), in a case where a Bench of the Appellate Tribunal has jurisdiction over more than one State."

24. Referring to a judgment of Madras High Court, namely, Commissioner of Income Tax Vs. S. Sivaramakrishna Iyer 1968 (70) ITR 860, the learned Judge opined :-

"The said provisions show that in a case where a reference is made to a High Court by a Bench of the Appellate Tribunal under section 66 of the Act the reference is just an intermediate stage, and the case (appeal before the Bench) would be finally disposed of by the Bench after receiving the judgment of the High Court in the reference. So, instead of adopting a different basis for that intermediate stage, if would be quite appropriate to adopt the same basis as the one adopted for determining the jurisdiction of the Bench. Thus, it would be appropriate and in consonance with the aforesaid provisions of the Act and the Standing Orders if the basis for the jurisdiction of the Bench is adopted, instead of adopting the basis mentioned in Section 64 of the Act, as suggested in the

www.taxcode.in

Case Citation: (2017) taxcode.in 351 SC

decision of the Madras High Court in the case. Commissioner of Income-tax, Madars v. S. Sivaramakrishna Iyer."

25. Yet again in Suraj Woolen Mills Vs. Collector of Customs, 2000 (123) ELT 471 (Del), Lahoti, J. as the learned Chief Justice of India then was, noticed the aforementioned decision as also other decisions operating in the field and held :-

"10. The Division Bench decision in the case of Seth Banarsi Dass Gupta has been followed by another Division Bench in Birla Cotton & Spg Mills Ltd Vs. CIT Rajasthan (1980) 123 ITR 354. The assessee carried on business in Jaipur. It had its registered office in Delhi. The assessment orders were passed by ITO at Jaipur and appeals were disposed by the C at Jaipur. The matter came up before the Tribunal at Delhi and was heard by the Central Bench of the Income-tax Appellate Tribunal as there was no Tribunal at Jaipur. The Division Bench held that the court to which reference should be made would be the court having jurisdiction over the territory in which the office of the ITO was situated.

11. Recently the same principle has been followed by this Court in Suresh Desai & Associates Vs. CIT [1991] 230 ITR 912. In this judgment, the Divi- sion Bench has assigned yet another reason why the High Court of that State wherefrom the matter arises would only be competent to hear the reference. A decision of one High Court is a binding authority within its territorial jurisdiction; but it is not a binding precedent for another High Court or Tribunal outside its territorial jurisdiction. The Division Bench has held as under :

"On account of the abovesaid doctrine of precedents and the rule of binding efficacy of the law laid down by the High Court within its territorial jurisdiction, the questions of law arising for decision in a reference should be determined by the High Court which exercises territorial jurisdiction over the situs of the Assessing Officer. Else it would result in serious anomalies. An assessee affected by an assessment order at Bombay may invoke the jurisdiction of the Delhi High Court to take advantage of the law laid down by it and suited to him and thus get rid of the law laid down to the contrary by the High Court of Bombay not suited to the assessee. This cannot be allowed."

12. Having made a careful comparative reading of the provisions of the Income-tax Act and the Customs Act, as also the relevant rules and orders of the Tribunal we are unhesitatingly of the opinion that the principles laid down in the abovesaid three Division Bench decisions of Delhi High Court can be applied and do apply to the facts and circumstances of the present case.

13. The present case arises out of the State of Bombay. The petitioner may have its factory establishment at Panipat in the State of Haryana but that is irrelevant. The adjudicating authority is at Bombay. Obviously it is bound by the law laid down under the provisions of the Customs Act or any other law as interpreted by the High Court of Bombay. For the purpose of the case at hand, the

www.taxcode.in

Case Citation: (2017) taxcode.in 351 SC

petitioner must be held bound by the law as applicable and as prevailing in the State of Mahrashtra whereat the goods were to be imported and whereat the proceedings under the Act were concluded. In the case at hand if the CEGAT would have stated the case then the reference would have been made to the High Court of Bombay and in the event of the application for statement of case having been refused it is the High Court of Bombay which the petitioner should have approached for issuing a requi- sition to the Tribunal to state the case."

26. In Commissioner of Central Excise, Delhi Vs. Enkay HWS India Ltd. 2002 (139) E.L.T. 21, Arijit Pasayat & D.K. Jain, JJ. in a case arising under section 35H of the Central Excise Act opined :-
"2. When the matter was placed for admission, we pointed out to learned counsel for the petitioner that this High Court does not have jurisdiction to deal with the matter, in view of the decision of this Court in Seth Banarsi Dass Gupta v. Commissioner of Income Tax (Central) [1978 (113) ITR 817]. In the said case, white dealing with the scope of entertaining reference under the Income Tax Act, 1961 (in short, 'the I.T Act'), it was observed that this High Court, that the State within whose territorial jurisdiction original adjudicating authority functions would have jurisdiction to deal with the reference under the concerned Statute. The view was again reiterated in Suresh Desai and Associates v. Commissioner of Income Tax [71 (1968) DLT 772]. That was also a case under Section 256 (2) of the I.T. Act. In a petition for reference arising under the Act in Central Excise Case No. 5 of 1997 (Commissioner of Central Excise v. Technological Institute of Textile decided on 9-11-1998, it was held that the High Court within whose jurisdiction adjudicating authority functions would have territorial jurisdiction to entertain the matter. We have also expressed similar view in Central Excise Act Case No. 7 of 2000 disposed of on 30-10-2000 taking note of decision of the Apex Court in Stridewell Leather (P) Ltd. v. Bhankerpur Simbhaoli Beverages (P) Ltd. [AIR 1944 SC 158], while dealing with the scope of expression "the High Court" under Section 10F of the Companies Act, 1956 (in short, the Companies Act').
3. We find no substance in the plea of learned counsel for petitioner that site of the Commissionerate or appellate authority determines the jurisdiction in view of what has been stated in the aforesaid decision."

27. The said decisions were followed by the Division Bench of the High Court of Bombay in Bombay Snuff (supra) to hold:-
"6. The only difference in the legal position that existed at the time the above decision was rendered and the position that prevails today is that instead of the law envisaging a reference from the Tribunal to the High Court, the law now provides for an appeal from every order passed by the Appellate Tribunal. That difference does not however affect the reasoning underlying the view taken by this Court in regard to its jurisdiction to

www.taxcode.in

Case Citation: (2017) taxcode.in 351 SC

entertain a petition under Section 35G. If a petition seeking reference under Section 35G was not maintainable in this court, there is no reason why an appeal under the said provision after its amendment can be said to be so maintainable. On the reasoning adopted by this court in Technological Institute of Textile's case (supra), an appeal under Section 35G must also be filed only in the High Court who has jurisdiction over the authority from whose order the proceedings have originated. The fact that the main seat of the CESTAT is situated in Delhi or that the appeal was heard and decided at Delhi would not mean that all appeals arising from cases so decided regardless from Page 2522 which State the case has originated can be maintained in this court."

28. Before the High Court, the decision of this Court in Kusum Ingots & Alloys Ltd. Vs. Union of India 2004 (168) ELT 3, wherein one of us was a member, was strongly relied upon. Therein, this Court while construing the provisions of clause 2 of Article 226, held:-

"25. 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."

29. The decisions operating in the field, which have been taken note of in Kusum Ingots & Alloys Ltd. (supra), would clearly go to show how the situs doctrine had been given a go-bye by making constitutional amendments. At one point of time writ petitions against the Union of India were being filed only before the Punjab & Haryana High Court as the said Court exercised territorial jurisdiction over Delhi, which was the seat of the Central Government. Experiencing difficulties, clause 1A of Article 226 was introduced. The Constitution again underwent a change by way of insertion of clause 2 of Article 226. Bombay Snuff (supra) has been followed by Karnataka High Court in Big Apple Computers Vs. Commissioner of Customs & Central Excise, Hyderabad 2007 (207) ELT 36, wherein it was held :-

"10. This judgment clearly applies to the facts of this case. We also see a subsequent judgment of the Delhi High Court 2006 (194) ELT 264. In the said case, the High Court was considering as to whether in terms of Section 35(G)3 of the Customs Act the Delhi High Court could consider the appeal, filed by the assessee. The tribunal in para 6 noticed as under;

6. The only difference in the legal position that existed at the time the above decision was rendered and the position that prevails today is that instead of the law envisaging a reference from the tribunal to the High Court, the law now provides for an appeal from every order passed by the appellate tribunal. That difference does not however affect the reasoning underlying the view taken by this court in regard to its jurisdiction to entertain a petition under Section 35G. If a petition seeking reference under Section 35G was not maintainable in this court, there is no reason why an appeal under the said provision after its amendment can be said to be maintainable. On the reasoning adopted by this amendment can be said to be so maintainable. On the reasoning adopted by this

www.taxcode.in

Case Citation: (2017) taxcode.in 351 SC

court in Technological Institute of Textile's case (supra), an appeal under Section 35G must also be filed only in the High Court who has jurisdiction over the authority from whose order the proceedings have originated. The fact that the main seat of the CESTAT is situated in Delhi or that the appeal was heard and decided at Delhi would not mean that all appeals arising from cases so decided regardless from which State the case has originated can be maintained in this court."

30. In Nasiruddin (supra) and Kusum Ingots & Alloys Ltd. (supra), the court was not dealing with a question of this nature. Therefore, the same are not authorities for the proposition that the High Court, which is situated at the same place as the situs of the Tribunal, alone will have jurisdiction. If the cause of action doctrine, as analysed hereinbefore is given effect to, invariably more than one high Court may have jurisdiction, which is not contemplated.

31. The learned Solicitor General relies upon the decision in Stridewell Leathers (P) Ltd. & Ors. Vs. Bhankerpur Simbhaoli Beverages (P) Ltd. (1994) 1 SCC 34 wherein construing Section 10A vis-'-vis Section 10F of Companies Act, 1956, it was held that the High Court would mean the High Court having jurisdiction in relation to a place at which the registered office of the Company concerned is situated as indicated in Section 2(11) read with Section 1A thereof.

32. We are, however, of the view that in terms of the Companies Act, "the High Court" was clearly intended to specify the particular High Court identified by Section 10F itself, and therefore, it was held not to be a High Court indicated by the place at which Company Law Board passes the order under appeal.

33. However, our attention has been drawn to Gurdit Singh & Ors. Vs. Munsha Singh & Ors. AIR 1977 SC 640, wherein this Court opined that no distinction could legitimately been drawn between the right to sue and cause of action unless so indicated in the relevant statute. Yet again in M/s. M. Ramnarain Pvt. Ltd. & Anr. Vs. State Trading Corpn. Of India Ltd. (1983) 3 SCC 75, a right to appeal was held to be carrying with it distinct cause of action stating :-

"It is his submission that in considering the provisions of Order 23, Rule 1, the relevant fact to be borne in mind is the subject matter of the appeal and if the subject matter of the appeal be different, as in the present case it is the earlier appeal No. 36 of 1981 being confined to the subject matter of instalment and the subsequent appeal No. 44 of 1981 being against the decree on the merits of the claim,\027the withdrawal of the earlier appeal cannot, in any way, be a bar to the maintainability of the subsequent appeal. Mr. Nariman has in this connection referred to the decision of this Court in Vallabhdas v. Dr. Madan Lal and Ors. in which this Court "equated the meaning of the words "subject matter" in Order 23 Rule 1 with the meaning of the words "cause of action" in Order 23 Rule 2. Relying on this decision, Mr. Nariman has argued that the "subject matter" of the appeal within the meaning of Order 23, Rule 1, must be considered in the light of the meaning of the words "cause of action" in Order 2, Rule 2; and it is his argument that as the "cause of action" in respect of the claim for instalment is entirely different from the "cause of action" in respect of decree which embraces within its fold the 'subject matter" of the respective claims of the parties in the suit, the withdrawal of the earlier appeal No. 36 of 1981

www.taxcode.in

Case Citation: (2017) taxcode.in 351 SC

against the instalments cannot in any way affect the maintain ability of the appeal No. 44 of 1981 against the decree on the merits of the claim. Mr. Nariman has next contended that the provisions of Order 2, Rule 2 of the Civil Procedure Code do not in any way affect the maintainability and the merits of the present appeal No. 44 of 1981. He has submitted that the said provisions have no application to an appeal and in any event, the cause of action and the subject matter of the present appeal are entirely different from the cause of action and the subject of the earlier appeal.

34. As against this, the submission of the learned Attorney General was as under:
"It is his argument that the right of appeal which is no doubt a statutory right will also necessarily be governed by the provisions of Order 2, Rule 2 and as the appeal is filed not against the entire subject matter of appeal arising out of the cause of action in the appeal, the right to file another appeal against the decree is clearly lost."

35. Accepting Mr. Nariman's submissions, this Hon'ble Court ruled thus:

"Even if the principles underlying Order 2, Rule 2 can be considered to apply to an appeal, the maintainability of the instant case cannot be held to be affected in any way as the cause of action in respect of the present appeal is entirely different from the cause of action on the basis of which the earlier appeal had been filed." (Emphasis supplied)

36. In that case the jurisdiction of the High Court was not to be determined in order to give effect to the doctrine of 'cause of action' envisaged under the Code of Civil Procedure.

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

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

39. Section 20(c) of the Code of Civil Procedure reads as under:

"20. Other suits to be instituted where defendant reside or cause of action arises. Subject to the limitation aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction\026
(c) the cause of act5ion, wholly, or in part, arises."

40. Although in view of Section 141 of the Code of Civil Procedure the

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Case Citation: (2017) taxcode.in 351 SC

provisions thereof would not apply to writ proceedings, the phraseology used in Section 20(c) of the Code of Civil Procedure and Clause (2) of Article 226, being in pari materia, the decisions of this Court rendered on interpretation of Section 20(c) of CPC shall apply to the writ proceedings also. Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action, as what is necessary to be proved, before the petitioner can obtain a decree, is material facts. The expression material facts is also known as integral facts.

41. Keeping in view the expression "cause of action" used in clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction thereof accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter though the doctrine of forum conveniens may also have to be considered.

42. In Mussummat Chand Kour V. Partap Singh (15 1A 156), it was held:-

"....the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour."

For the reasons aforementioned, we are of the opinion that the High Court was correct in its view. These appeals, therefore, being devoid of any merit, deserve to be dismissed. However, in the facts and circumstances of this case, there shall be no order as to costs.

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