

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CEAC No.19 of 2011**
CEAC No.20 of 2011

% RESERVED ON: AUGUST 03, 2011
PRONOUNCED ON:AUGUST 12,2011

+ **CEAC No.19 of 2011**

DHARAMPAL PREMCHAND LTD. . . . APPELLANT

through : Mr. Pritesh Kapur,
Advocate.

VERSUS

COMMISSIONER OF CENTRAL EXCISE . . .RESPONDENT

through: Mr. Mukesh Anand,
Advocate with Mr. R.C.S.
Bhadoria, Advocates.

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CORAM :-

**HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. When these appeals came up for preliminary hearing, the learned counsel for the respondent appeared on advance notice and as demurrer raised the objections about the territorial jurisdiction of this Court to entertain these appeals. For this reason, we heard the counsel for both the parties at length. The facts which have given rise to the question of jurisdiction, we may clarify that we are taking note of those facts only which are relevant for deciding this controversy eschewing other details which do not concern the subject matter at this stage.
2. The appellant is in the business of manufacture of 'Baba' brand Scented Chewing Tobacco, Scented Ellaichi, Scented Supari, etc. Though it has a registered office at Chandni Chowk, New Delhi, one of its manufacturing units

is situated in Barotiwala, District – Solan, Himachal Pradesh.

3. Show cause notice dated 02.04.2003 was issued by the Office of the Deputy Commissioner, Central Excise Division, Shimla to the said unit of the appellant at Himachal Pradesh under Section 11A of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') proposing to raise demand of short paid National Calamity Contingent Duty ('NCCD' for brevity) in the sum of ₹54,0004/- on additive mixture cleared during the period from 01.04.2002 to 16.10.2002 along with interest under Section 11AB of the Act. Penalty under section 25 of the Central Excise Rules, 2002 (hereinafter referred to as 'the Rules') was also proposed. Similar show cause notice dated 19.06.2002 for another period, i.e., 01.10.2001 to 31.03.2002 and 01.04.2002 to 16.10.2002 was issued vide two separate orders in two appeals. The appellant replied to the said show cause notice claiming exemption from the payment of duties. However, the Deputy Commissioner passed orders dated 28.07.2004 holding that the NCCD is leviable during the relevant period and

confirmed the demand of NCCD along with interest and imposed personal penalty of ₹50,000/-.

4. The appellant preferred appeal against this order before the Commissioner (Appeals), Chandigarh. The Commissioner (Appeals), Chandigarh vide order dated 30.11.2004 allowed the appeal of the appellant and set aside the order of the Deputy Commissioner, Shimla.
5. The Commissioner of Central Excise (CCE), Chandigarh felt aggrieved by the said order and approached the Customs, Excise & Service Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal'), Principal Bench, New Delhi. This appeal of the CCE has been allowed vide orders dated 23.11.2010 thereby setting aside the order of the Commissioner (Appeals), Chandigarh and restoring that of the Deputy Commissioner, Shimla.
6. Challenging the aforesaid common order passed in two appeals, present appeals are preferred by the appellant under Section 35G of the Act. Objection to the territorial jurisdiction of this Court raised by Mr. Mukesh Anand, learned counsel for the respondent/Department is that the unit of the appellant is situated in Himachal Pradesh. The

said unit is paying excise to the respondent's authorities in Himachal Pradesh on clearing the excisable goods. Dispute about the non-payment of NCCD arises in Himachal Pradesh, as the same was not paid for the period in question while clearing the excisable goods. For this reason, it is the Office of the Commissioner, Central Excise, Division – Shimla, which initiated the action for recovery of the NCCD by issuing the show cause notice and passing the adjudication order. He, thus, submitted that merely because the Appellate Authority like, the Tribunal has its office in Delhi, would not mean that against the order passed by the Tribunal, this Court will have territorial jurisdiction. He referred to a very recent judgment of Five Judges Bench of this Court in a batch matters with lead case ***M/s. Sterling Agro Industries Ltd. Vs. Union of India & Ors.*** (decided on 01.08.2011 in W.P. (C) No.6570/2010, submitting that the said judgment is applicable on all forces in this case and clinches the issue.

7. The submission of Mr. Pritesh Kapur, learned counsel appearing for the appellant, per contra, was that the

aforesaid judgment in ***M/s. Sterling Agro Industries Ltd. (supra)*** dealt with the question of jurisdiction and was not concerned with statutory appeals. He argued that insofar as statutory appeals like the present one preferred under Section 35G of the Act are concerned, these would be covered by the specific provision and argued that reading these provisions would clearly demonstrate that the appeal was maintainable in the High Court of Delhi. Before we take note of this submission in detail, we would discuss the judgment of ***M/s. Sterling Agro Industries Ltd. (supra)*** in the principles for discerning the territorial jurisdiction, which are laid down therein, as the understanding of those principles stated in the said judgment would be necessary to understand and deal with the contentions of the learned counsel for the appellant.

8. In the case before the Five Judges Bench also, the admitted position was that the petitioner – industry was situate in District - Bhind, Malanpur in the State of Madhya Pradesh. The initial order was passed by the Assistant Commissioner of Customs ICD, Malanpur, District – Bhind (M.P.). The appellate order was passed

by the Commissioner (Appeals) – I, Customs and Central Excise & Service Tax at Indore (M.P.). Against the order of the Commissioner (Appeals), revision was preferred by the petitioner before the Revisional Authority, viz., Officer of the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi, which was also dismissed vide orders dated 09.07.2010. Since there is no further statutory appellate, challenging the orders dated 09.07.2010, the petitioner had invoked the jurisdiction of this Court at New Delhi under Article 226 of the Constitution of India. In this backdrop, the question arose as to whether the decision dated 09.07.2010 passed by the Revisional Authority at New Delhi would clothe the High Court of Delhi with necessary territorial jurisdiction. Obviously there also, the respondent had taken plea that since the petitioner had its premises at Madhya Pradesh; initial orders were passed in Madhya Pradesh and even the appellate order was passed by the Authority in Madhya Pradesh, the Court in Delhi would not have territorial jurisdiction only because the revisional authority has its situs in New

Delhi for revision against the order passed by the Commission (appeals) in Madhya Pradesh.

9. Since some diversion of opinion of different Benches of this Court was found and the doubts with regard to correctness and soundness of the earlier decision of the Full Bench of this Court in ***New India Assurance Company Limited Vs. Union of India and Others*** [AIR 2010 Delhi 43 (FB)] were expressed, the matter was referred to the Larger Bench consisting of Five Benches. This is how the question of jurisdiction was dealt with elaborately and exhaustively by Five Judges Bench in its judgment dated 01.08.2011 answering the reference by partially overruling and clarifying the decision in ***New India Assurance Company Limited (supra)***.
10. It is not necessary to spell out the detailed analysis of the relevant case, which was undertaken by the Five Judges Bench in the said matter. Our purpose would be served by reproducing the last few paras of the said judgments along with conclusion stated in Para 32:

"30. From the aforesaid pronouncements, the concept of *forum conveniens* gains signification. In Black's Law Dictionary, *forum conveniens* has been defined as follows:

“The court in which an action is most appropriately brought, considering the best interests and convenience of the parties and witnesses.”

31. The concept of *forum conveniens* fundamentally means that it is obligatory on the part of the court to see the convenience of all the parties before it. The convenience in its ambit and sweep would include the existence of more appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. The balance of convenience is also to be taken note of. Be it noted, the Apex Court has clearly stated in the cases of **Kusum Ingots** (supra), **Mosaraf Hossain Khan** (supra) and **Ambica Industries** (supra) about the applicability of the doctrine of *forum conveniens* while opining that arising of a part of cause of action would entitle the High Court to entertain the writ petition as maintainable.

32. The principle of *forum conveniens* in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the Court would not itself constitute to be the determining factor compelling the Court to entertain the matter. While exercising jurisdiction under Articles 226 and 227 of the Constitution of India, the Court cannot be totally oblivious of the concept of *forum conveniens*. The Full Bench in New India Assurance Co. Ltd. (supra) has not kept in view the concept of *forum conveniens* and has expressed the view that if the appellate authority who has passed the order is situated in Delhi, then the Delhi High Court should be treated as the *forum conveniens*. We are unable to subscribe to the said view.

33. In view of the aforesaid analysis, we are inclined to modify the findings and conclusions of the Full Bench in New India Assurance Company Limited (supra) and proceed to state our conclusions in seriatim as follows:

(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/revisional authority is situate and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would

amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs of the tribunal/appellate authority/revisional authority totally ignoring the concept of *forum conveniens*.

(b) Even if a miniscule part of cause of action arises within the jurisdiction of this court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of *Alchemist Ltd.* (supra).

(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of *forum conveniens*.

(d) The conclusion that where the appellate or revisional authority is located constitutes the place of *forum conveniens* as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in question.

(e) The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a *mala fide* manner is too restricted / constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of *mala fide* alone.

(f) While entertaining a writ petition, the doctrine of *forum conveniens* and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in ***Ambica Industries*** (supra) and ***Adani Exports Ltd.*** (supra).

(g) The conclusion of the earlier decision of the Full Bench in ***New India Assurance Company Limited*** (supra) "that since the original order merges into the appellate

order, the place where the appellate authority is located is also *forum conveniens*” is not correct.

(h) Any decision of this Court contrary to the conclusions enumerated hereinabove stands overruled.

34. *Ex consequenti*, we answer the reference by partially overruling and clarifying the decision in **New India Assurance Company Limited** (supra) in the above terms. Matters be listed before the appropriate Division Bench for appropriate consideration.”

11. It hardly needs any elaboration that once we apply the parameters laid down in the aforesaid judgment to the facts of this case, the obvious conclusion shall be that merely because the Tribunal being Appellate Authority decides the appeal would not be a reason to confer the territorial jurisdiction on this Court. It has been categorically held that place or location where the tribunal/appellate authority/revisional authority is situate would not be a very material as situs of the tribunal/appellate authority/revisional authority totally ignoring the concept of *forum conveniens*.
12. Further, in order to confer jurisdiction on a Court, one has to see whether cause of action, even if it is miniscule part of cause of action arises to the jurisdiction of this Court or not. However, the cause of action has to be understood

as per the ratio laid down in the case of ***Alchemist Ltd.*** (supra). Though order of the Appellate Authority may constitute a cause of action, to make the revision maintainable in the High Court within whose jurisdiction the appellate authority is situated, yet the High Court, in a given case, may refuse its jurisdiction by invoking the doctrine of *forum conveniens*. Therefore, while entertaining a writ petition of the doctrine of *forum conveniens* and the nature of cause of action is required to be scrutinized by the High Court.

13. When the cause of action is to be understood in the manner described in ***Alchemist Ltd.*** (supra), which would mean that situs of the Tribunal would not be a part of cause of action and further that it is to be seen along with *forum non conveniens*, this Court would refuse to entertain the matter. The subtle distinction which learned counsel for the appellant tries to make was that the present proceedings were not in the nature of writ petition filed under Article 226 of the Constitution of India, but were the statutory appeals provided under Section 35G of the Act and therefore, for the purpose of ascertaining as

to whether this Court has the jurisdiction or not, provision of Section 35G of the Act and related provisions should be kept in mind. Elaborating the submission, learned counsel drew out attention to sub-Section (9) of Section 35G, which makes provisions of Section 100 of the Code of Civil Procedure applicable. Precise language of this provision is as under:

"Section 35G. Appeal to High Court. –

(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. "

14. Learned counsel, thus, submitted that since provisions of Section 100 of the Code of Civil Procedure were applicable to such appeals, it was necessary to fall back on that provision to ascertain whether High Court of Delhi will have jurisdiction or not. For this purpose, he emphasized upon the provisions of sub-Section (1) of Section 100, which makes the following reading:

"Section 100. Second Appeal. – (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law."

15. His submission that as per the said Section, appeal can lie to the High Court from the order passed in appeal by “any court subordinate to the High Court”. According to him, since the Tribunal was subordinate to this Court and had superintending jurisdiction over the said Tribunal under Article 227 of the Constitution of India, this Court was competent to hear the present appeals. To buttress his submission, the learned counsel for the appellant placed reliance upon the following discussion contained in the judgment of the Supreme Court in the case of ***Ladli Parshad Jaiswal Vs. The Karnal Distillery Co., Ltd. and Others*** [AIR 1963 SC 1279]:

“...A court subordinate to the High Court is a court subject to the superintendence of the High Court, whereas a court immediately below is the court from whose decision the appeal has been filed.”

16. He also relied upon the judgment of the Apex Court in the case of ***M. Janardhana Rao Vs. Joint Commissioner of Income Tax*** [2005) 2 SCC 324] in the following terms:

“10. Some of the provisions of Section 260-A are in *pari material* with various sub-sections of Section 100 CPC. The provisions are Sections 260-A(1), 260-A(2) (c) , 260-A(3), 260-A(4) of the Act corresponding to Sections 100(1), 100(3), 100(4) and 100(5) CPC.”

17. Answer to the aforesaid arguments has already been provided by this Court as well as the Supreme Court. We may first refer to the judgment of the Supreme Court, in this behalf, i.e., **Ambica Industries Vs. Commissioner of Central Excise**, [2007 (213) ELT 323 (SC)]. That was a case directly concerning with the appeal under Section 35G of the Act and the doctrine of cause of action was elaborately explained with reference to the aforesaid provision. In that case also, the appellant was assessed at Lucknow and order of show cause notice was passed at Lucknow by the Adjudicating Authority. The matter ultimately came up before the Tribunal in New Delhi, as the Tribunal at New Delhi exercised jurisdiction in respect of cases arising within the territorial limit of the State of Uttar Pradesh, NCT of Delhi and State of Maharashtra, etc. Against the order of the Tribunal, appeal was filed in this Court, which was dismissed for want of territorial jurisdiction following the earlier Division Bench judgment in the case of **Bombay Snuff P. Ltd. Vs. Union of India (UOI) and Ors.** [2006 (194) ELT 264 (Del.)]. Against the order of this court, dismissing the appeal of the

appellant, thereby affirming the order of this Court, the Supreme Court held that situs of Tribunal was not determinative factor for High Court to its territorial jurisdiction. The Court took note of the fact that situs of the Tribunal may vary from time to time, as the Tribunal was exercising jurisdiction over more than one State. In such a case, if the jurisdiction is confirmed merely because the Tribunal decided the appeal, it would lead to disastrous result and therefore, doctrine of cause of action would not be invoked in a case of this nature. It would be of interest to note that the argument of the appellant in the said appeal, predicated on the Constitution Bench judgment of the Supreme Court in the case of **Nasiruddin Vs. S.T.A. Tribunal** [AIR 1976 SC 331] was that the decision of the Tribunal provides cause of action and therefore, when decision was rendered by the Tribunal in Delhi, High Court of Delhi will have the jurisdiction holding that in case of appeal under Section 35G of the Act, this plea of cause of action would not be determinative, the Court explained the same in the following terms:

“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 litis, 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.”

18. Thereafter in Para 16 of the judgment, the Supreme Court noted identical argument of the counsel for the appellant, which is advanced before us, based on sub-Section (9) of Section 35G of the Act and on that basis, relied upon sub-Section (1) of Section 100 of the CPC. The Court proceeded to repel this contention in the following words:

“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."

19. The Apex Court was, therefore, of the opinion that in such a case, situs doctrine will have to be given a go by. Following discussion in the said judgment in this behalf, also needs to be extracted Para 37 and 38:

"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)."

20. This judgment, thus, amply demonstrates that the view taken in ***M/s. Sterling Agro Industries Ltd. (supra)***, though in the context of Article 226 of the Constitution of India, can be applied to the statutory appeal under Section 35G of the Act as well.

21. Though there are many judgments of this Court dismissing appeals for want of territorial jurisdiction in identical circumstances, our purpose would be served by referring to the case of **Vrindavan Beverages Pvt. Ltd. Vs. CCE, Meerut** [2010 (20) S.T.R. 283 (Del.)]. This Court relied upon **Ambica Industries (supra)** and discussed the issue in the following manner:

"6. This question has now been authoritatively settled by the Supreme Court in *Ambica Industries - vs- Commissioner of Central Excise*, (2007) 6 SCC 769 where several of the above quoted decisions have been reviewed. The Petitioner/Assessee in that case carried on business at Lucknow where it was also assessed. It approached the CESTAT, New Delhi which exercised CEAC10/2008 Page 6 of 10 jurisdiction in respect of the States of Uttar Pradesh, Maharashtra and the National Capital Territory of Delhi. The Appeal filed in the Delhi High Court was rejected on the ground of lack of territoriality, and the Appeal to the Supreme Court turned out to be a sterile exercise. Their Lordships observed that "the aggrieved person is treated to be the dominus litis, 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. ... It would give rise to the issue of forum shopping. 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 the judgments of the High Court of Bombay".

7. Learned counsel for the Petitioner has relied heavily on the pronouncements in Canon Steels P. Ltd. -vs- Commr. of Customs (Export Promotion), 2007 (218) ELT 161(SC). Significantly, Ambica Industries was not cited or considered even though it was an earlier decision of a Coordinate Bench. Even more significant is the fact that Canon is irreconcilable with the view of the same learned Judge in Commr. of Central Excise, Delhi-III -vs- Enkay HWS India Ltd., 2002(139) ELT 21(Del) where it had been held that the site of the Commissionerate or Appellate Authority does not determine jurisdiction. It appears evident to us that what prevailed on his Lordship, Dr. Arijit Pasayat in Canon, was the fact that a writ petition had been filed and withdrawn in the High Court of Delhi, to be later filed in the High Court of Punjab and Haryana which also was found not to have jurisdiction. In order to effect substantial justice, their Lordships directed that the writ petition should be heard in New Delhi. What is interesting to note is the fact that the question that the jurisdiction would lie before the High Court of Judicature at Bombay because the cause of action and primary adjudication had taken place there, was not even broached before the Court in that matter.

8. Learned Senior Counsel appearing for the Petitioner has read copiously from the decision of the Supreme Court in S.S. Rathore -vs- State of Madhya Pradesh, (1989) 4 SCC 582 as well as Kunhayammed -vs- State of Kerala, (2000) 6 SCC 359, both of CEAC10/2008 Page 8 of 10 which deal with the doctrine of merger. This doctrine, however, will have no relevance or application to the question before us. We must assume that the order of the

Adjudicating Authority had merged with that of the CESTAT. That is not the central issue before us. The question is altogether different, that is, which is the forum where such an order can be challenged. We are not persuaded to ignore altogether the place where the cause of action had arisen and where the original adjudication had taken place which would constitute forum conveniens for all the parties concerned."

22. Following the aforesaid decision, we hold that this Court has no territorial jurisdiction to entertain the appeals and accepting the preliminary objection raised by the learned counsel for the respondent/Department in this behalf.
23. We dismiss these appeals.

(A.K. SIKRI)
JUDGE

(M.L. MEHTA)
JUDGE

AUGUST 12, 2011
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