IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.11.2020
CORAM
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. Nos. 23702 and 23703 of 2012
and
M.P. Nos. 1 and 1 of 2012

M/s. Anshuai Electronics,
Rep. by A.S.Satyanarayana,Plot No.114,
Radha Krishna Housing Colony,
A.S. Rao Nagar,
ECIL Post,
Hyderabad.
... Petitionerin WP.23702

M/s. Anshuai Electronics,
Rep. by L.R.Subba Rao,Plot No.114,
Radha Krishna Housing Colony,
A.S. Rao Nagar,
ECIL Post,
Hyderabad, plot no.ib WP.23703

-vs-

1. The Settlement Commission,
Customs & Central Excise,
Additional Bench,
2nd Floor, Narmada Block,
Custom House,
No. 60, Rajaji Salai,
Chennai - 600 001.

2. The Commissioner of Customs & Central Excise,
Hyderabad - II Commissionerate,
Hyderabad.
... Respondents in both W.P.s

Common Prayer:- Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records and quashing that portion of the impugned order in Order No. 21/2012-Customs dated 08.08.2012 along with the Corrigendum dated 13.08.2012 by which the First Respondent has denied the immunity from prosecution and imposed the exorbitant amount of redemption fine.

For Petitioner : Mr. T.Ramesh

For Respondents: Mr. A.P.Srinivas, Standing Counsel (for R2)
No appearance (for R1)

C O M M O N O R D E R
(through video conference)

Heard Mr. T.Ramesh, Learned Counsel for the Petitioner and Mr. A.P.Srinivas, Learned Standing Counsel appearing for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. It is borne out from the materials placed on record that the Petitioner is a resident of Hyderabad in the State of Telangana and aggrieved by the action taken against him by the Second Respondent, whose office is also situated at Hyderabad in the State of Telangana, he made applications in Settlement Application Nos. S.A.Cus-67&68/2011-SC before the First Respondent, viz., Customs and Central Excise Settlement Commission Additional Bench, Chennai in which common Order No. 21/2012-Cus dated 08.08.2012 has been passed and the same is assailed in these Writ Petitions.

3. The reason stated by the Petitioner for having approached this Court instead of High Court of Telangana at Hyderabad is that the 'seat of authority' of the First Respondent is situated at Chennai within the territorial limits of jurisdiction of this Court. Even if it is assumed that in addition to the High Court of Telangana, this Court would also have territorial jurisdiction, the principle of forum conveniens would come into play as held by the decision of the Division Bench of this Court in C. Ramesh -vs- Director General of Police (Order dated 06.06.2013 in W.P. (MD) No. 8790 of 2013) as follows:-

> “7. Exercise of jurisdiction is based on arising of the cause of action, either in whole or in part in any one of the said Revenue Districts. [See RAJASTHAN HIGH COURT ADVOCATES' ASSOCIATION Vs. UNION OF INDIA AND OTEHRS (2001 (2) SCC 294) and B.STALIN Vs. THE REGISTRAR, SUPREME COURT OF INDIA AND OTHERS (2012 (3) LW 489 (FB))].
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> 8. It should be remembered that the part of cause of action must be substantial in nature. The territorial jurisdction of the Court is linked with the place of accrual of cause of action. [See U.P. RASHTRIYA CHINI MILL ADHIKARI PARISHAD, LUCKNOW Vs. STATE OF U.P. AND OTHERS (1995 (4) SCC 738)].
>
> 9. Referring to KUSUM INGOTS & ALLOYS LTD. Vs. UNION OF INDIA (2004 (3) CTC 365), a Full Bench of this Court in SANJOS JEWELLERS Vs. SYNDICATE BANK, BANGALORE AND OTHERS (2007 (5) CTC 305), held as under:-
>
> > "30. 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 Vs. DEWAN JAGBIR SAWHNEY, AIR 1941 CAL 670 : ILR (1941) 1 CAL 490; MADANLAL JALAN Vs. MADANLAL, 1945 (49) CWN 357: AIR 1949 CAL 495; BHARAT COKING COAL LTD. Vs. JHARIA TALKIES & COLD STORAGE (P) LTD., 1997 CWN 122; S.S.JAIN & CO. Vs. UNION OF INDIA, 1994 (1) CHN 445, and NEW HORIZONS LTD. Vs. UNION OF INDIA, AIR 1994 DEL 126]."

10. Question of entertaining a lis disclosing a cause of action or part of cause of action is based on the averments contained in the affidavit etc. At that stage, the truth or otherwise of the averments need not be gone into. But, there must be necessary averments disclosing a cause of action, so that the Court can take cognizance of/entertaining the lis exposed in the petition for taking further action. [See OIL AND NATURAL GAS COMMISSION Vs. UTPAL KUMAR BASU AND OTHERS (1994 (4) SCC 711)].
11. A Court cannot arrogate/assume/confer upon itself a jurisdiction-territorial jurisdiction, when it has no such jurisdiction. Lack of jurisdiction to entertain a matter goes to the root of the matter, otherwise whatever action taken or orders passed by the Court becomes a nullity, it is non est and of no consequence at all resulting in wasting of precious public time. Courts are barred from indulging in hypothetic and academic exercises."

4. Having regard to the aforesaid legal position, there does not appear to be any justification to entertain the Writ Petitions for the relief sought in this Court. Though obvious, it is made clear that no view has been expressed by this Court on the correctness or otherwise on the merits of controversy involved in the matter.

5. Accordingly, the Writ Petitions are dismissed with the aforesaid clarifications. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Settlement Commission,
   Customs & Central Excise,
   Additional Bench,
   2nd Floor, Narmada Block,
   Custom House,
   No. 60, Rajaji Salai,
   Chennai - 600 001.

2. The Commissioner of Customs & Central Excise,
   Hyderabad - II Commissionerate,
   Hyderabad.

Copy to

M/s. Anshuai Electronics,
Rep. by A.S.Satyanarayana,
A.S. Rao Nagar,
ECIL Post,
Hyderabad.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.38512

W.P. Nos. 23702 and 23703 of 2012

SR II(CO)
GSP(18/12/2020)