IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2020

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.NO.5630 OF 2018
AND
W.M.P.NO.6963 OF 2018

M/s.Paramount Vijetha Holdings
Represented by its Partner -K.A. Umesh
Sy. No. 45/2 & 45/3, Begur Hobli
Arikere, Off Bannerghatta Road
Bangalore - 560 076. ... Petitioner

-vs-

1. The Customs & Excise Settlement Commission
Additional Bench
II Floor, Narmada Block, Customs House
60, Rajaji Salai
Chennai - 600 001.

2. The Commissioner of Central Tax
Bengaluru South GST Commissionerate
First Floor, C.R. Building
Queen's Road
Bengaluru - 560 071. ... Respondents

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records on the files of the First Respondent herein in Final Order No.78/2017-ST dated 10.11.2017 and quash the same while directing the First Respondent to hear and dispose the settlement application in F.No. S.A.S. Tax No.48/2017-SC filed by the Petitioner on its merits.

For Petitioner : Mr.S.Ravi

For Respondents: Mr.Rajnish Pathiyil
Central Government Standing Counsel

O R D E R
(through video conference)

Heard Mr.S.Ravi, Learned Counsel for the Petitioner and Mr.Mr.Rajnish Pathiyil, Learned Central Government Standing Counsel appearing for the Respondents, 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, which is a partnership firm carrying on business at Bangalore in the State of Karnataka and aggrieved by the action taken against it by the Second Respondent, whose office is also situated at Bangalore in the State of Karnataka, had made an application in S.A. (S.T.) No. 48/2017-SC before the First Respondent, viz., Customs and Central Excise Settlement Commission Additional Bench, in which order dated 10.11.2017 has been passed and the same is assailed in this Writ Petition.

3. The reason stated by the Petitioner for having approached this Court instead of High Court of Karnataka at Bangalore 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 Karnataka, this Court would also have territorial jurisdiction, the principle of forum conveniens would come into play as held by the Division Bench of this Court in C. Ramesh -vs- The 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 jurisdiction 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)].
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> 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 Petition 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 Petition is dismissed with the aforesaid clarifications. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Maya

To

1. The Customs & Excise Settlement Commission
   Additional Bench
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   60, Rajaji Salai
   Chennai - 600 001.

2. The Commissioner of Central Tax
   Bengaluru South GST Commissionerate
   First Floor, C.R. Building
   Queen's Road, Bengaluru - 560 071.

+1cc to Mr.Rajnish Pathiyil, Advocate, S.R.No.37873

W.P.No.5630 of 2018

SR(CO)
CS/04/12/2020