

In the High Court of Judicature at Madras

Dated : 14.9.2020

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Writ Appeal No.717 of 2020 & CMP.No.9767 of 2020

M/s.Mulberry Silks Ltd.
(formerly known as M/s.
Shakashambana Silks Exports
(P) Ltd.), rep.by its Managing
Director Mr.Manish Kumar
(cause title accepted vide order of court
dated 14.8.2020 made in CMP.No.8083
of 2020 in WA.SR.No.46325 of 2020 by MMSJ & RHJ) ...Appellant

.Vs.

1. The Settlement Commission
(IT & WT), Additional Bench,
Ministry of Finance, Department of Revenue,
No.646, Anna Salai, Chennai-35.
2. The Commissioner of Income Tax
Bangalore-III, Bangalore.
3. The Deputy Commissioner of Income
Tax, Company Circle 4(1) (Inv.),
IV Floor, Kendriya Sadan,
Koramangala, Bangalore. ...Respondents

APPEAL under Clause 15 of the Letters Patent against the order
in W.P.No.33412 of 2006 dated 26.5.2020.

Prayer in WP No.33412/2006: Writ Petition filed under Article
226 of the Constitution of India, praying for issuance of a Writ
of Certiorarified Mandamus to call for the records in
No.561/KNK/1/29/2001-IT dated 30.03.2005 on the file of the
first respondent, quash the same to the extent of which it has
declined to compute and allow the relief under Section 80-HHC of
the Income Tax Act and direct the said respondent to compute and
allow the said relief.

For Appellant : Mr.G.Baskar
For Respondents : Mrs.Hema Muralikrishnan, SSC

Judgment was delivered by T.S.Sivagnanam, J

We have heard Mr.G.Baskar, learned counsel for the appellant and Mrs.Hema Muralikrishnan, learned Senior Standing Counsel accepting notice for the respondents.

2. This intra-court appeal has been filed by the assessee challenging the order passed by the learned Single Judge in W.P.No. 33412 of 2006 dated 26.5.2020. The said writ petition was filed by the appellant as against the order passed by the first respondent herein namely the Settlement Commission for IT & WT, Additional Bench, Chennai dated 30.3.2005 by raising various issues on merits.

3. However, the learned Single Judge, by the impugned order, dismissed the said writ petition on the ground of lack of territorial jurisdiction by following the decision of the Hon'ble Supreme Court in the case Kusum Ingots and Alloys Ltd. Vs. Union of India [reported in (2004) 168 ELT (3)], the decision of the Delhi High Court in the case of R.T.Industries Vs. Income Tax Settlement Commission [reported in (2018) 98 Taxmann.com 236] and another decision of the Delhi High Court in the case of West Coast Ingots (P) Ltd. Vs. Commissioner of Central Excise, New Delhi [reported in (2007) 209 ELT 343]. The correctness of the impugned order is challenged before us by way of this appeal.

4. It is the argument of the learned counsel for the appellant that there is a marked distinction between the expressions 'jurisdiction' and 'forum convenience' and even if a minuscule part of cause of action has arisen within the jurisdiction of this Court, the writ petition is maintainable. It is further submitted that the seat of the Settlement Commission is in Chennai, which has jurisdiction to settle cases arising from various States and one of the States being Karnataka where the appellant is registered and on account of the order passed by the Settlement Commission, the entire matter gets transferred to the Settlement Commission, which is purely within the jurisdiction of this Court and therefore, the writ petition ought to have been entertained and the matter ought to have been decided on merits.

5. We do not agree with the said contention raised by the learned counsel for the appellant for more than one reason. Firstly, this aspect of the matter has been decided by the Hon'ble Supreme Court in the case of Kusum Ingots and Alloys Ltd.

6. An identical issue came up for consideration before a Division Bench of this Court, to which, one of us (TSSJ) was a

party in the decision in the case of Zeenath International Supplies Vs. Commissioner of Customs [reported in 2014 (304) E.L.T. 491]. This matter arose under the provisions of the Customs Act, 1962. The appellant therein filed a civil miscellaneous appeal under Section 130 of the Customs Act as against the final order passed by the Settlement Commission. Admittedly, the appellant therein was carrying on their business activities outside the State of Tamil Nadu. The question arose was as to whether this Court could entertain the appeal merely on the ground that the situs of the Settlement Commission was within the jurisdiction of this Court. The said legal issue was answered against the appellant therein in the following terms :

"7. Since the question relating to the jurisdiction of this Court was raised as a preliminary objection, we directed the learned counsel appearing for the appellant to address arguments on the contention raised by the Revenue as regards the territorial jurisdiction of this Court to entertain this appeal under Section 130 of the Act.

8. The learned counsel appearing for the appellant placed reliance on the decision of the Full Bench of this Court in the case of Sanjos Jewellers v. Syndicate Bank reported in 2007 (5) CTC 305, and submitted that in the said case, the writ petition was filed challenging an order of the Debt Recovery Appellate Tribunal situated within the territorial limit of this Court while the Original Tribunal was situated in the State of Andhra Pradesh. While considering "cause of action" the Full Bench held that the writ petition before this Court is maintainable. The learned counsel also placed reliance on the decision of this Court in the case of R. Raman v. National Insurance Company Ltd., reported in (2011) 5 MLJ 849, and the decision of the Hon'ble Supreme Court in the case of Canon Steels P. Ltd. v. Commissioner of Customs (Export Promotion). reported in 2007 (218) E.L.T. 161 (S.C.) = 2009 (15) S.T.R. 97 (S.C.). Therefore, it is the contention of the appellant that though the Original Authority, the First Appellate Authority were situated in the State of Andhra Pradesh, the order passed by the Tribunal would be a relevant factor for the appellant choosing to file this appeal before this Court and the doctrine of forum convenience would be very relevant when part of the "cause of action" has arisen within the jurisdiction of this Court.

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10. The issue which fell for consideration before the Hon'ble Supreme Court in the case of Ambica Industries, referred above, was relating to determination of situs of the High Court in which appeals would lie under Section 35G(1) of the Central Excise Act (pari materia to Section 130 of the Customs Act). The appellant therein was an assessee under the provisions of the Central Excise Act. The assessment proceedings ultimately went before the Tribunal at New Delhi. At the relevant point of time, the CESTAT, New Delhi exercised 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. As the situs of the Tribunal was at Delhi, an appeal under Section 35G of the Central Excise Act was filed before the Delhi High Court. The Division Bench of the Delhi High Court held it had no territorial jurisdiction in the matter. Challenging the same, the assessee preferred appeal to the Hon'ble Supreme Court. The Union of India resisted the appeal contending that the term of "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 Central Excise Act. It was further 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.

11. The Hon'ble Supreme Court after noticing the earlier Five Judges Bench judgment in the case of Nasiruddin v. S.T.A., Tribunal reported in (1975) 2 SCC 671, pointed out that the decision of a Tribunal would be binding on the Assessing Authority and 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. In the said case, the Delhi Tribunal exercised jurisdiction over all the three States and in all the three States there are High Courts. It was further pointed out that in the event, aggrieved person is treated to be a 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 and it will only be of persuasive value on the authorities functioning under a different jurisdiction. It was held that 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, pointing out that 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 would be able to successfully evade the law laid down by the High Court at Bombay. Furthermore, it was held that when an appeal is provided under a statute, Parliament must have thought of one High Court and 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 and in the case of this nature, the cause of action doctrine may not be invoked. The Hon'ble Supreme Court further held that in terms of Article 226(2) of the Constitution, High Court has 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 there within, but the same tests cannot be applied when the appellate Court exercises jurisdiction over a Tribunal situated in more than one State and in such a situation, the High Court situated in the State where the first Court is located should be considered to be the appropriate appellate authority.

12. Therefore, it was held that determination of the jurisdiction of the High Court on the touchstone of Sections 35G and 35H of the Central Excise Act should be considered only on the basis of statutory provisions and not anything else. After referring to the decision of this Court in the case of Commissioner of Income Tax v. S. Sivaramakrishna Iyer reported in 1968 (70) ITR 860 (Madras), the decision of the Delhi High Court in the case of Seth

Banarsi Dass Gupta v. Commissioner of Income Tax, reported in (1978) 113 ITR 817 (Del.), and the decision of the Hon'ble Supreme Court in the case of Kusum Ingots & Alloys Ltd. v. Union of India, reported in 2004 (168) E.L.T. 3, held that although in terms of Article 227 of the Constitution as also Article 226(2) thereof, the High Court would exercise its discretionary jurisdiction as also the 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 there within but the same tests cannot be applied when the Appellate Court exercises a jurisdiction over a Tribunal situated in more than one State. In such a situation, the High Court situated in the State where the first Court is located should be considered to be the appropriate Appellate Authority. CPC did not contemplate such a situation. Further, it was pointed out that the submission of the appellant is inconsistent and contradictory. The doctrine of dominus litis or doctrine of situs of the appellate Tribunal do not go together. Dominus litis 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. Further, the Apex Court held that the situs of a Tribunal may vary from time to time and it could be Delhi or some other place. Whether its jurisdiction would be extending to three 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 should be considered only on the basis of statutory provisions and not anything else. While defining the High Court in terms of Section 36(b) of the Act, Parliament never contemplated to have a situation of this nature and if the cause of action doctrine is given effect to, invariably more than one High Court may have jurisdiction, which is not contemplated.

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15. Even in the case of Canon Steels P. Ltd. (supra), ultimately, the Hon'ble Supreme Court held that 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 considering that no person should be left without the remedy though the case was withdrawn by the

assessee, direct the restoration of the said case as undisputably, the Delhi High Court has jurisdiction to deal with the matter and the Delhi High Court was directed to deal the matter on merits. Therefore, the decision in the case of the Canon Steels P. Ltd. (supra), does not in any manner advance the case of the appellant and the decision of the Hon'ble Supreme Court in the case of Ambica Industries, referred supra, would be squarely applicable to the facts of this case."

7. To sum up the legal position as referred to in the above decision, the doctrine of dominus litis or doctrine of situs of the appellate Tribunal do not go together; and a dominus litis 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. Further, it was pointed out that situs of a Tribunal may vary from time to time and it could be Delhi or some other place or Chennai as in the case on hand and the determination of jurisdiction of the High Court should be based on the relevant Statute and that the Parliament never contemplated to have a situation of this nature and if the cause of action doctrine is given effect to, invariably more than one High Court may have jurisdiction, which is not contemplated.

8. As noted above, the appellant is an assessee on the file of the third respondent namely the Deputy Commissioner of Income Tax, Company Circle 4(1)(Inv.), IV Floor, Kendriya Sadan, Koramangala, Bangalore. The Appellate Authority, before whom the assessee filed the appeal is the second respondent herein namely the Commissioner of Income Tax, Bangalore-III, Bangalore. Therefore, the learned Single Judge was justified in rejecting the writ petition on the ground that due to lack of territorial jurisdiction, the order passed by the Settlement Commission did not call for interference.

9. In the light of the above, the writ appeal is dismissed leaving it open to the appellant to move the High Court of Karnataka if they are so advised. It is also made clear that the above writ appeal has been dismissed solely on the ground of lack of territorial jurisdiction to entertain the appeal/writ petition and the merits of the case of the appellant have not been dealt with in this judgment. No costs. Consequently, the connected CMP is also dismissed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

1. The Settlement Commission (IT & WT),
Additional Bench, Ministry of Finance,
Department of Revenue, 646, Anna Salai,
Chennai-35.
2. The Commissioner of Income Tax,
Bangalore-III, Bangalore.
3. The Deputy Commissioner of Income Tax,
Company Circle, 4(1)(Inv.), IV Floor,
Kendriya Sadan, Koramangala, Bangalore.
4. The Section Officer,
E.R.Section, High Court, Madras.

+lcc to M/s.G.baskar, Advocate, Sr.No.29846

+lcc to Hema Muralikrishnan, Advocate, Sr.No.29930

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