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W.P.No.5586 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

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Coal Oremine Trading Corporation Pvt Ltd,
Represented by its Director Mr.S.Shanmugaraja,
Having office at:
No.14, 5th Floor, Second Line Beach Road,
Parrys, Chennai – 600 001.

... Petitioner

Vs.

1.MSTC Limited,
Rep by its Director,
3rd Floor, No.ISPAT Bhavan,
No.5, Kodambakkam High Road,
Chennai – 600 034.

Also at:6th Floor, Jeevan Prakash,
LIC Building, Jeevitha Bima Road,
Vishakhapatnam – 530 004.

2.The Joint Commissioner,
Customs,
KP House, Nellore,
Andhra Pradesh.

... Respondents



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Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Mandamus, directing the 2nd respondent herein to deliver the goods comprising of 28,80,000 sticks of cigarettes due to its in furtherance to the Delivery Order bearing No.MSTC/VZG/19-20/693 dated 08.11.2019.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.K.Umesh Rao
Senior Standing Counsel
for R2

No appearance
for R1

ORDER

The petitioner is engaged in the business of trading and supplying customs seized goods. The petitioner is registered with the first respondent. The petitioner had participated in an e-auction conducted by the first respondent in Vishakhapatnam.

2. It appears that the petitioner had also submitted a bid for Rs.45,00,000/- purchase of cigarettes stick. The bid was accepted by the



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first respondent. The petitioner had also paid a sum of Rs.11,25,000/- and was required to pay the balance amount on 17.10.2019 which was duly received by the first respondent. However, it appears when the petitioner approached the respondents, the petitioner was informed that auctioned goods was delivered to one Mr.Poyil as early as 22.11.2019. The petitioner therefore sent a complaint to the first respondent on 14.12.2019 through e-mail.

3. The petitioner has filed this writ petition before this Court on the ground that the petitioner participated on e-auction from Chennai. It is further case of the petitioner that the petitioner had made payments from Chennai and therefore the petitioner was entitled to file this writ petition before this Court although, both the respondents are outside the jurisdiction of this case in the State of Andhra Pradesh.

4. The learned counsel for the second respondent has opposed to the writ petition stating that no part of cause of action has arisen before this Court and therefore the writ petition filed by the petitioner is liable to be dismissed.



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5. The learned counsel for the respondents has relied on the decision of the Hon'ble Supreme Court rendered in **The State of Goa vs. Summit Online Trade Solutions (P) Ltd., and Ors.** , AIR 2023 SC 1536: (2023) 111 GSTR 135(SC)

6. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for second respondent.

7. No part of cause of action has arisen within the jurisdiction of this Court at Chennai. Merely because the petitioner is located in Chennai and participated in the E-auction from Chennai and made payments from Chennai, the Court will not entitled the petitioner to invoke the jurisdiction of this Court. The Court will be guided by the doctrine of forum conveniens has recognized by the Hon'ble Supreme Court in **Kusum Ingots vs. Union of India**, (2006) 4 SCC 254. The doctrine is being followed universally by all the Courts in the Courts. The Hon'ble Supreme Court held in **Kusum Ingots vs. Union of India**, (2006) 4 SCC 254. as under:-



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“ 16..... The expression ‘cause of action’ has not been defined in the Constitution. However, the classic definition of ‘cause of action’ given by Lord Brett in *Cooke v. Gill*¹ that “*cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court*”, has been accepted by this Court in a couple of decisions. It is axiomatic that without a cause, there cannot be any action. However, in the context of a writ petition, what would constitute such ‘cause of action’ is the material facts which are imperative for the writ petitioner to plead and prove to obtain relief as claimed. Determination of the question as to whether the facts pleaded constitute a part of the cause of action, sufficient to attract clause (2) of Article 226 of the Constitution, would necessarily involve an exercise by the high court to ascertain that the facts, as pleaded, constitute a material, essential or integral part of the cause of action. In so determining, it is the substance of the matter that is relevant. It, therefore, follows that the party invoking the writ jurisdiction has to disclose that the integral facts pleaded in support of the cause of action do constitute a cause empowering the high court to decide the dispute and that, at least, a part of the cause of action to move the high court arose within its jurisdiction. Such pleaded facts must have a nexus with the subject matter of challenge based on which the prayer can be granted. Those facts which are not relevant or germane for grant of the prayer would not give rise to a cause of action conferring jurisdiction on the court. These are the guiding tests”.



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8. That apart in **The State of Goa vs. Summot Online Trade Solutions (P) Ltd., and Ors**, 2023 SCC OnLine SC 254, the Court has referred to meaning of expression for the “cause of action” for the purpose of Article 226 (2) of the Constitution of India. The Hon'ble Supreme Court has held that the expression ‘cause of action’ has not been defined in the Constitution. However, the classic definition of ‘cause of action’ given by Lord Brett in **Cooke v. Gill**¹ that “*cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court*”, has been accepted by this Court in a couple of decisions. It is axiomatic that without a cause, there cannot be any action. The Court further held that which would constitute such ‘cause of action’ is the material facts which are imperative for the writ petitioner to plead and prove to obtain relief as claimed. Determination of the question as to whether the facts pleaded constitute a part of the cause of action, sufficient to attract clause (2) of Article 226 of the [Constitution](#), would necessarily involve an exercise by the High court to ascertain that the facts, as pleaded, constitute a material, essential or integral part of the cause of action. In so



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determining, it is the substance of the matter that is relevant.

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9. Thus, it was held that the party invoking the writ jurisdiction has to disclose that the integral facts pleaded in support of the cause of action do constitute a cause empowering the high court to decide the dispute and that, at least, a part of the cause of action to move the high court arose within its jurisdiction. Such pleaded facts must have a nexus with the subject matter of challenge based on which the prayer can be granted.

10. In this case, the Officers of the respondents are located in Vishakapatnam and in Nellore both within the jurisdiction of the High Court of Andhra Pradesh. Any clarification will have to be furnished only by these Officers from Andhra Pradesh of the respondents herein. Merely because, the first respondent also has an office in Chennai *Ipso facto* would not entitle to the petitioner to invoke the jurisdiction of this Court under Article 226(2) of the Constitution of India. The writ petition is therefore liable to be dismissed. in the light of the above discussion.

C.SARAVANAN, J.



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11. This writ petition stands dismissed and liberty is given to the petitioner to file appropriate writ petition before the High Court of Andhra Pradesh. No costs.

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Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking Order
Neutral Citation: Yes/No
jas/kkd

To

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