IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3303 of 2021

==

Binod Kumar Gupta Son of Shri Jagannath Prasad Gupta Resident of Near Baldeo Bhawan, Flat No. 401, Rajhans Appartment, Punai Chak, L.B.S. Nagar, P.S.- Shashtri Nagar, Patna, Bihar- 800023 presently working as Assistant Commissioner, office of the Commissioner of Customs (Preventive), Patna under the Customs (Preventive) Zone, Patna.

... ... Petitioner/s

Versus

1. Union of India through the Secretary (Revenue), Department of Revenue, Ministry of Finance, Government of India, North Block, New Delhi- 110001.
2. The Chairman, Central Board of Indirect Taxes and Customs, North Block, New Delhi- 110001.
3. The Chief Commissioner of Customs (Prev) Zone, Patna, 4th Floor, Kendriya Rajaswa Bhawan, Bir Chand Patel Path, Patna- 800001.
4. The Director General, Directorate of Revenue Intelligence, 7th Floor, D-Block, Indraprastha Bhawan, Indraprastha Estate, New Delhi- 110001.
5. The Additional Director General, Directorate of Revenue Intelligence, Lucknow Zonal Unit, Lucknow, 2/31, Vishal Khand, Gomati Nagar, Lucknow- 226010.
6. The Additional Director, Directorate of Revenue Intelligence, Lucknow Zonal Unit, Lucknow, 2/31, Vishal Khand, Gomati Nagar, Lucknow- 226010.
7. The Deputy Director, Directorate of Revenue Intelligence, Lucknow Zonal Unit, Lucknow, 2/31, Vishal Khand, Gomati Nagar, Lucknow- 226010.
8. The Commissioner of Customs (Prev.), Lucknow, Hall No. 3, 5th and 11th Floor, Kendriya Bhawan, Sector- H, Aliganj, Lucknow- 226024.
9. The Additional Commissioner of Customs (Prev.), office ot the Commissioner of Customs (Prev), Lucknow, Hall No. 3, 5th and 11th Floor, Kendriya Bhawan, Sector- H, Aliganj, Lucknow- 226024.
10. The Additional Commissioner, office ot the Chief Commissioner of Customs (Prev) Zone, Patna, 4th Floor, Kendriya Rajaswa Bhawan, Bir Chand Patel Path, Patna- 800001.

... ... Respondent/s

==

Appearance :

For the Petitioner/s : Mr.D.V. Pathy, Adv.
Mr.Sadashiv Tiwary, Adv.

WEB COPY

For the Respondent/s : Dr.K.N.Singh (ASG)
Mr.Anshuman Singh, Sr. S.C., Custom
Mr.Shivaditya Dhari Sinha, Adv.
Mr.Devansh Shankar Singh, Adv.

==

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 21-08-2024

In the instant petition, petitioner has prayed for the following reliefs:-

> *i) To issue a writ in the nature of certiorari for quashing the show cause notice issued vide DRI F. No. DRI/LZU-GI/26/Enq-03 (Int.0)/2020/9371 dated 17.06.2020 by the Additional Director, Directorate of Revenue Intelligence, Lucknow Zonal Unit, Lucknow, in so far it relates to the Petitioner (Noticee No. 17) whereby and where under the Petitioner is called upon to show cause to the Additional Commissioner of Customs (Prev), Lucknow as to why penalty under Section 112 of the Customs Act, 1962 should not be imposed upon him and action under Section 136 of the said Act should not be initiated against him being illegal, arbitrary, discriminatory, malicious and mala fide; And/or*
>
> *ii) To declare that the protection under Section 155 (1) of the Customs Act, 1962 is available to the petitioner as the act(s) performed by him are in pursuance to discharge of duties entrusted under the Customs Act, 1962 and have been performed and intended to be performed "in good faith"; And/or*
>
> *iii) To declare that the proceedings instituted vide show cause notice issued vides DRI F. No. DRI/LZU-GI/26/Enq-03*

WEB COPY

(Int.0)/2020/9371 dated 17.06.2020 by the Additional Director, Directorate of Revenue Intelligence, Lucknow Zonal Unit, Lucknow without giving a month's previous notice in writing of the intended proceeding and after the expiration of three months from the accrual of the alleged cause of action as time barred and in contravention to the provisions of Section 155 (2) of the Customs Act, 1962; And/or

iv) To issue appropriate writs/orders/directions to the Respondent Authorities to return the mobile phone of Samsung make having IMEI 1 No. 358583106997995 and IMEI 2 No. 358584106997993 taken into the custody by the officers of Directorate of Revenue Intelligence, Lucknow Zonal Unit, Lucknow on 19.12.2019 from the possession of the Petitioner, without serving the Seizure Order to the Petitioner and without informing the grounds of seizure at the time of conduction of seizure being resumed without authority of law and without the procedure established by law; And/or

v) A direction be issued upon the respondent authorities to forthwith produce and/or caused to be produced the entire records relating to the Petitioners' case and on such production being made, render conscionable justice upon perusing the same; And/or

vi) As Ad-Interim relief to grant stay on the proceedings instituted under the show cause notice issued vide DRI F. No. DRI/LZU-GI/26/Enq-03 (Int.0)/2020/9371 dated 17.06.2020 by the Additional Director, Directorate of Revenue Intelligence, Lucknow Zonal Unit, Lucknow, in so far it relates to the Petitioner (Noticee No. 17) till disposal of this Petition; And/or

vii) To grant any other relief or reliefs to which the petitioners are entitled in the facts and circumstances of the case.

WEB COPY

2. During pendency of the present petition a subsequent development insofar as passing of adjudicatory order dated 03.11.2021 was also subject matter of the present petition and it has been placed on record as Annexure-P/11.

3. Perusal of the records we have noticed that writ petition is not maintainable insofar as challenge to the show cause notice for the reasons that there are no violation of any statutory provision or show cause notice dated 17.06.2020 was issued by an incompetent authority. Be that as it may, during pendency of the present petition final order has been passed on 03.11.2021. It is submitted that even though petitioner has statutory remedy of appeal or a revision before the concerned authority. The same has not been exhausted for the reasons that there are violation of principle of natural justice in not providing opportunity of cross-examination and other related issues. However, we have noticed that cause of action accrued under the territorial jurisdiction of Uttar Pradesh for the reasons that the impugned order dated 03.11.2021 vide Annexure-P/11 was issued by the Commissioner, Customs(Prev) at Lucknow. Merely petitioner is resident of State of Bihar that does not enable him to invoke jurisdiction of the Patna High Court.

4. Article 226 of the Constitution as it originally

WEB COPY

stood had two- fold limitations on the jurisdiction of the High Courts with regard to their territorial jurisdiction. Firstly, the power could be exercised "throughout the territories in relation to which it exercises jurisdiction", that is to say, the writs issued by the court cannot run beyond the territories subject to its jurisdiction. Secondly, the person or authority to whom the High Court is empowered to issue such writs must be "within those territories", which clearly implied that they must be amenable to its jurisdiction either by residence or location within those territories.

5. Article 226 was amended while incorporating clause 2. Clause 2 reads as under:-

> *"(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the sea of such Government or authority or the residence of such person is not within those territories."*
>
> The effect of the amendment is that it made the accrual cause of action an additional ground to confer jurisdiction to a High Court under Article 226. Clause (2) would enable the High Court within whose jurisdiction the cause of action arises to issue directions, order or writs

WEB COPY

to any Government, authority or person, notwithstanding that the seat of such Government or authority or the residence of such person is outside territorial jurisdiction of the High Court. Writ can be issued by a High Court against a person, Government or authority residing within the jurisdiction of that High Court, or within whose jurisdiction the cause of action in whole or in part arises. Since one of the contention is that partial cause of action is accrued in State of Bihar, it is necessary to take note of what is the meaning of cause of action. After the insertion of clause (1-A), re-numbered as "2" to Article 226 of Constitution, now the jurisdiction of a High Court can be invoked if the cause of action arises, wholly or in part, within the territorial jurisdiction of that High Court. However, the expression "cause of action" has neither been defined in the Constitution nor in the Code of Civil Procedure, 1908. But it may be described as "a bundle of essential facts, which it is necessary for the plaintiff to prove before he can succeed", or if not proved would give the defendant a right to judgment in his favour. It gives occasion for and forms the foundation of the suit. "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 as expressed in the case of ***Cooke vs. Gill, (1873) 8 CP 107: 42 LJ PC 98.***

WEB COPY

6. In the case of ***Oil & Natural Gas Commission vs. Utpal Kumar Basu,*** reported in ***(1994) 4 SCC 711,*** Supreme Court held that the question as to whether the Court has a territorial jurisdiction to entertain a writ petition, must be concluded on the basis of pleadings made in the petition, the truth or otherwise thereof being immaterial. In the same decision, Supreme Court was pleased to observe that:

> *"So also the mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action." (Para No.8)*

7. Hon'ble Supreme Court in the case of ***State of Rajasthan vs. Swaika Properties,*** reported in ***(1985) 3 SCC, 217,*** opined that mere service of a notice would not give rise to any cause of action unless service of notice was integral part of the cause of action. The said decision has also been noticed in ***Oil and Natural Gas Commission*** (supra). Supreme Court in para no. 8 held as under:

> *"The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action."*

Supreme Court in the case of ***Aligarh Muslim University and Another Vs. Vinay Engineering Enterprises (P) Ltd. and***

WEB COPY

another, reported in ***(1994) 4 SCC 710,*** *l*amented in para no.2 as under:

"2. We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction. The contracts in question were executed at Aligarh, the construction work was to be carried out at Aligarh, even the contracts provided that in the event of dispute the Aligarh Court alone will have jurisdiction. The arbitrator was from Aligarh and was to function there. Merely because the respondent was a Calcutta-based firm, the High Court of Calcutta seems to have exercised jurisdiction where it had none by adopting a queer line of reasoning. We are constrained to say that this is case of abuse of jurisdiction and we feel that the respondent deliberately moved the Calcutta High Court ignoring the fact that no part of the cause of action had arisen within the jurisdiction of that Court. It clearly shows that the litigation filed in the Calcutta High Court was thoroughly unsustainable."

Supreme Court in the case of ***Union of India and Others Vs. Adani Exports Ltd. and another,*** reported in ***(2002) 1 SCC 567,*** held that in order to confer jurisdiction on a High Court to entertain a writ petition it must disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the court to decide the dispute and the entire or a part of it arose within its jurisdiction.

8. Supreme Court in the case of ***National Textile***

WEB COPY

Corpn. Ltd. vs. Haribox Swalram, reported in ***(2004) 9 SCC 786,*** held as under:-

> *"As discussed earlier, the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petitioner and the view to the contrary taken by the Division Bench cannot be sustained. In view of the above finding, the writ petition is liable to be dismissed."*

9. In the case of ***Abdul vs. Union of India***, reported in ***AIR 1979, Calcutta, 354*** and also in the case of ***Union of India vs. Oswal Industries***, reported in ***(1984) 2 SCC 646***, the Courts have held that cause of action accrued in 'X' place, if the Head office-respondent is in 'Y' place. Aggrieved person who is at 'Y' cannot invoke jurisdiction at 'X' place on the ground that Head Office is situated in 'X' place. It was a case of disciplinary proceedings against railway servant who was subjected to disciplinary proceedings and it was concluded in Bihar, a petition cannot be entertained by the High Court of Calcutta merely on the ground that Head Office of the Railway was located in Calcutta. In the case of ***Oswal Industries*** cited supra, Supreme Court has strongly disapproved the practice of deliberately filing of writ petitions in distant High Courts as part

WEB COPY

of a manoeuvring legal battle. In the case of ***Bloom Dekor Ltd. vs. Subhash Himatal Desai***, reported in ***(1994) 6 SCC 322***, Supreme Court described as "judicial adventurism" and "forum shopping". If a small portion 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 convenience. It is so held in ***Bhagat Singh Bugga vs. Dewan Jagbir Sawhney***, reported in ***AIR 1941 Cal. 670***, ***Madan Lal Jalan v. Madanlal***, reported in ***AIR 1949 Cal 495***, ***Bharat Coking Coal Ltd. vs. Jharia Talkies & Cold Storage (P) Ltd.***, reported in ***1997 CWN 122***, ***S.S. Jain & Co. vs. Union of India***, reported in ***(1994) 1 CHN 445*** and ***New Horizons Ltd. vs. Union of India***, reported in ***AIR 1994 Del 126***.

10. Recently, the Hon'ble Supreme Court in the case of ***State of Goa vs. Summit Online Trade Solutions Private Limited and Others*** reported in ***(2023) 7 SCC 791*** in para 17 to 20 held as under:-

> *"17. Determination of the question as to whether the facts pleaded constitute a part of the cause of action, sufficient to attract*

WEB COPY

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.

18. Here, tax has been levied by the Government of Goa in respect of a business that the petitioning company is carrying on within the territory of Goa. Such tax is payable by the petitioning company not in respect of carrying on of any business in the territory of Sikkim. Hence, merely because the petitioning company has its office in Gangtok, Sikkim, the same by itself does not form an integral part of the cause of action authorising the petitioning company to move the High Court. We hold so in view of the decision of this Court in National Textile Corpn. Ltd. v. Haribox

WEB COPY

Swalram. The immediate civil or evil consequence, if at all, arising from the impugned notification is that the petitioning company has to pay tax @ 14% to the Government of Goa. The liability arises for the specific nature of business carried on by the petitioning company within the territory of Goa. The pleadings do not reflect that any adverse consequence of the impugned notification has been felt within the jurisdiction of the High Court. At this stage, we are not concerned with the differential duty as envisaged in Schedule II (@ 6%) vis-à-vis Schedule IV (@ 14%) of the impugned notification. That is a matter having a bearing on the merits of the litigation.

19. The long and short of the matter is that the petitioning company has to bear the liability of paying tax @ 14% levied by the Government of Goa for selling lottery tickets in the State of Goa under Schedule IV of the impugned notification. It does not bear out from the petition memo how the impugned notification levying tax for carrying on business in the State of Goa subjects the petitioning company to a legal wrong within the territory of Sikkim for the writ petition to be entertained by the High Court.

20. In our opinion, the High Court ought not to have dismissed the applications of the appellant without considering the petition memo which has no semblance of a case having been made out as to how part of cause of action

WEB COPY

arose within the territorial limits of the High Court or without any pleading as to how any right has been affected within the territory of Sikkim."

The aforementioned principle is aptly applicable to the case in hand on the issue of territorial jurisdiction of this court to not to entertain the present petition.

11. In the light of aforementioned principles, the present CWJC No. 3303 of 2021 stands dismissed. Dismissal of this CWJC, not preclude the petitioner from approaching the appropriate court to assail impugned actions of the respondents.

12. Pending I.A.'s, if any, stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

shahzad/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	31.08.2024
Transmission Date	N.A.

WEB COPY