

Before Hemant Gupta & Rajesh Bindal, JJ.

*Before Ajay Kumar Mittal, J.**

M/S VIJAY K. JAIRATH & COMPANY—Petitioner

versus

UNION OF INDIA AND ANOTHER—Respondent

CWP No. 12420 of 2008

September 01, 2008 (DB)

January 25, 2013 (SB)

(A) Constitution of India, 1950—Art.226—Customs Act, 1962—Ss.112(b), 111(o)—Code of Civil Procedure, 1908—S.20—Challenge to order passed by Commissioner of Customs (Import), Mumbai-II by Petitioner having factory in jurisdiction of High Court—Penalty already imposed by Respondents pursuant to issuance of show cause notice raising demand of Customs duty and confiscation of goods—Again penalty imposed pursuant to same notice—Primary ground of challenge—Subsequent order imposing penalty in pursuance of same show cause notice—Without jurisdiction—Preliminary objection by Respondents—Order passed in Mumbai—No jurisdiction of this High Court—Article 226 (2)—Jurisdiction on Court in whose jurisdiction even part of cause of action has arisen—Once penalty is imposed—Appealable order—Hon'ble Mr. Justice Hemant Gupta held—Mere receipt of show cause notice within jurisdiction of this Court—Will not confer territorial jurisdiction—Hon'ble Mr. Justice Rajesh Bindal held—Even if a small fraction of cause of action arises within jurisdiction of the Court—The Court would have territorial jurisdiction to entertain the petition—Difference of opinion between members of Division Bench—Hon'ble Chief Justice made reference to a third Judge—Hon'ble Mr. Justice Ajay Kumar Mittal— Answered the reference against the assessee—It was held that the High Court had no territorial jurisdiction—Petition dismissed with liberty to take remedy in accordance with law.

Held, that the words 'cause of action' appearing in Article 226(2) of Constitution of India confers jurisdiction on the Court in whose jurisdiction even part of cause of action has arisen. The 'cause of action' means the bundle of facts which the petitioner must prove, if traversed, entitling him a judgment in his favour by the Court. Such is

the view of this Court in Oil and Natural Gas Commission's case(supra). In the aforesaid case, the jurisdiction of Calcutta High Court was invoked in respect of a tender acceptance of which was received by the writ petitioner at Calcutta. It was found that receipt of acceptance of tender has not given any part of cause of action.

(Para 9)

Further held, that the notice calling upon the petitioner providing an opportunity to show cause as to why penalty should not be imposed is a part of imposition of penalty. Once the penalty is imposed, such order is an appealable order. The show cause notice before imposition of penalty is necessary but mere receipt of notice by the petitioner within the jurisdiction of this Court will not confer territorial jurisdiction on this Court as the entire proceedings of sale of goods at the instance of the petitioner and the evasion of duty, if any, has taken place outside the territorial jurisdiction of this Court. The location of the petitioner is not determinative of the jurisdiction of this Court. On the other hand, it is the situs of the respondents, which is relevant for determining the place of occurrence of the cause of action. Therefore, it cannot be said that the petitioner will have territorial jurisdiction to invoke the jurisdiction of this Court only on the basis of receipt of show cause notice within the jurisdiction of this Court. The process of order imposing penalty in respect of evasion of duty started and culminated beyond the jurisdiction of this Court.

(Para 14)

Further held, that the purposes of deciding as to whether the facts averred by the petitioner would or would not constitute a part of cause of action to enable the petitioner to invoke jurisdiction of this Court, the first thing required to be considered is as to whether that action is integral part of cause of action. Even if a small fraction of cause of action arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain a petition. Reference can be made to a judgment of Hon'ble the Supreme Court in *Alchemist Ltd. and another v. State Bank of Sikkim and others*, (2007) 11 SCC 335.

(Para 21)

Further held, that keeping in view the facts of the present case, where from a perusal of show cause notice dated 29 .11.2004, it is evident that the same is addressed to the petitioner at his Ludhiana address. Even subsequent notices for affording opportunity to the petitioner for personal hearing were also addressed to the petitioner at his Ludhiana address and served there. Copy of order dated 24.3 .2008

also mentions the address of the petitioner of Ludhiana where the same was served/ in my opinion, this Court will have territorial jurisdiction to entertain the petition filed by the petitioner.

(Para 28)

(B) Constitution of India, 1950—Art. 226— Difference of opinion among members of Division Bench—Reference to third Judge—Petition dismissed for want of territorial jurisdiction—Petition returned for presenting before appropriate Court having territorial jurisdiction.

Held, that therefore, in view of order dated 01.05.2012 passed by this Court, wherein it has been held that this Court has no territorial jurisdiction to entertain the writ petition, the present petition is dismissed for want of territorial jurisdiction. It is, however, directed that the writ petition be returned to the petitioner for presenting the same before the appropriate Court having territorial jurisdiction.

(Para 28)

****Due to difference of opinion between Members of the Division Bench, the Hon'ble Chief Justice made reference to a third Judge. In terms of order dated 01.05.2012, the Hon'ble Judge answered the reference against the assessee. It was held that the High Court had no territorial jurisdiction.***

Jagmohan Bansal , Advocate, *for the petitioner*

Sanjiv Kaushik, Advocate, *for the respondent*

HEMANT GUPTA, J.

(1) The challenge in the present writ petition is to the order dated 18.03.2008, Annexure P-9, passed by the Commissioner of Customs (Import), Mumbai-II imposing penalty of Rs.50,00,000/- on the petitioner under section 112 (b) of the Customs Act, 1962 (hereinafter to be referred as "the Act").

(2) The petitioner, a proprietorship concern, having factory premises within the jurisdiction of this Court, has invoked the writ jurisdiction of this Court as all communications have taken place within the jurisdiction of this Court. It is alleged that the petitioner is a Ludhiana based manufacturing unit and is exporting its products for the last more than 10 years. In the year 2001, the petitioner with intent to manufacture a good quality of finished goods imported 48590 meter polyester fabric valued at Rs.954396/-. At the time of filing of bill of

entry, the custom duty involved was found to be Rs. 16, 15,418/-. Since the petitioner was not having funds to get the material cleared, the material was kept in bonded warehouse. The petitioner came in contact with a Delhi based broker who showed his willingness to buy the goods on high sea sales basis and such goods were sold to *Mis* Tirupati Exports. The said unit got its goods cleared without payment of duty against an advance licence.

(3) The Directorate of Revenue Intelligence, Surat, Gujarat, initiated its investigation against the said unit and it was revealed that the said unit had got cleared goods involving duty of Rs.2.60 crores without payment of duty against four advance licenses. The said unit had bought goods on high sea sales basis from the a number of importers, including petitioner. The Directorate of Revenue Intelligence issued a show cause notice dated 29.11.2004 to the said unit raising demand of Customs duty of Rs.2.60 crores and as to why the goods be not confiscated under section 111 (o) of the Act. However, the goods were not available for confiscation. In addition thereto, notices were ordered to be issued to the petitioner along with other persons as to why penalty should not be imposed on them under Section 112 of the Act. In terms of the said order, the petitioner was issued a show cause notice on I 0.02.2006 and after considering the reply filed by the petitioner, an order imposing penalty of Rs.7,50,000/- was passed by the Commissioner of Customs (Adjudication), Mumbai, on 31.12.2007. It is also pointed out that after the said order was passed, another order, Annexure P-9, has been passed by the Commissioner of Customs (Import), Mumbai-II, on 18.03.2008 imposing penalty of Rs.50,00,000/- in pursuance of the show cause notice issued earlier.

(4) The primary ground of challenge of order Annexure P-9 in the present writ petition is that penalty has been imposed vide earlier order dated 31.12.2007, therefore, the subsequent order imposing penalty in pursuance of the same show cause notice is without jurisdiction.

(5) However, learned counsel for the respondents have raised a preliminary objection that order, Annexure P-9, challenged by the petitioner in the present writ petition has been passed by the Commissioner of Customs (Import) at Mumbai, therefore, the writ petition filed by the petitioner invoking jurisdiction of this Court is not maintainable. It is further contended that order passed on 18.03.2008 is an appealable order, therefore, invocation of writ jurisdiction of this Court without availing the remedy of appeal is clearly untenable.

(6) Learned counsel for the petitioner has vehemently argued that order Annexure P-9 has been passed on the basis of show cause notice served upon the petitioner at Ludhiana i.e., within the territorial jurisdiction of this Court. Since the show cause notice is an integral part of imposition of penalty, therefore, this Court would have the territorial jurisdiction to entertain the petition. Reference has been made to Supreme Court judgment in *State of Rajasthan and others versus Mis Swaika Properties and another*¹. Reliance is also placed upon Single Bench judgment of Bombay High Court in *Dowsyl Polymers Pvt. Ltd. And another versus M.G. Abrol, Special Secretary, Ministry of Finance and others*².

(7) On the other hand, learned counsel for the respondents has placed reliance upon *Oil and Natural Gas Commission versus Utpal Kumar Basu and others*³, *Union of India and others versus Adani Exports Limited and another*⁴, *National Textile Corporation Limited and others versus Haribox Swalram and others*⁵ and *Kusum Ingots & Alloys Ltd. versus Union of India*⁶ to contend that this Court will not have territorial jurisdiction to entertain a writ petition in respect of an order passed by the Commissioner of Customs (Import), Mumbai.

(8) The entire case of the petitioner is based upon the fact that the show cause notice before imposing penalty was served upon the petitioner at Ludhiana and, therefore, this Court has territorial jurisdiction. But both the respondents impleaded in the present writ petition do not fall within the territorial jurisdiction of this Court. Specific reliance was placed upon *Mis Swaika Properties's case (supra)*, wherein it has been held that the cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice under section 52(2) of the Rajasthan Urban Improvement Act, 1959, on the respondents at their registered office at Calcutta could not give rise to a cause of action within in that territory unless the service of such notice was an integral part of the cause of action. In the aforesaid case, it was found that such service of notice was not an integral part and

¹ AIR 1985 SC 1289

² 1987 (31) E.L.T. 895

³ (1994) 4 SCC 711

⁴ (2002) 1 sec 567

⁵ (2004) 9 SCC 786

⁶ 2004(168) E.L.T. 3

consequently Calcutta High Court had no territorial jurisdiction over the issue relating to acquisition of land. On the basis of such finding, it was argued that in the present case, the show cause notice before imposing penalty is an integral part of the process of imposition of penalty and, therefore, receipt of notice at Ludhiana will confer territorial jurisdiction on this Court. To the same effect is the Single Bench judgment of Bombay High Court.

(9) The words 'cause of action' appearing in Article 226(2) of Constitution of India confers jurisdiction on the Court in whose jurisdiction even part of cause of action has arisen. The 'cause of action' means the bundle of facts which the petitioner must prove, if traversed, entitling him a judgment in his favour by the Court. Such is the view of this Court in *Oil and Natural Gas Commission's case (supra)*. In the aforesaid case, the jurisdiction of Calcutta High Court was invoked in respect of a tender acceptance of which was received by the writ petitioner at Calcutta. It was found that receipt of acceptance of tender has not given any part of cause of action. It was held to the following effect:-

" Therefore, merely because it read the advertisement at Calcutta and submitted the offer from Calcutta and made representations from Calcutta would not, in our opinion, constitute facts forming an integral part of the cause of action. 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. Besides the fax message of 15-1-1993, cannot be construed as conveying rejection of the offer as that fact occurred on 27-1-1993... "

(10) In *Adani Exports Ltd's case (supra)*, the question of territorial jurisdiction of Gujarat High Court was examined in terms of Import Export Policy. None of the respondents in the civil applications was stationed at Ahmedabad and the passbook in question, benefit of which the respondents sought in the civil applications was issued by an authority stationed at Chennai. The Court considered its earlier judgment reported as *Oil and Natural Gas Commission's case (supra)*. It was held to the following effect:-

"17. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial

jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad.

18. As we have noticed earlier, the fact that the respondents are carrying on the business of export and import or that they are receiving the export and import orders at Ahmedabad or that their documents and payments for exports and imports are sent/ made at Ahmedabad, has no connection whatsoever with the dispute that is involved in the applications. Similarly, the fact that the credit of duty claimed in respect of exports that were made from Chennai were handled by the respondents from Ahmedabad have also no connection whatsoever with the actions of the appellants impugned in the application. The non granting and denial of credit in the passbook having an ultimate effect, if any, on the business of the respondents at Ahmedabad would not also, in our opinion, give rise to any such cause of action to a court at Ahmedabad to adjudicate on the actions complained against the appellants.

19. In the case of ONGC this Court negated the contentions advanced on behalf of the respondents therein that either the acquisition of knowledge made through media at a particular place or owning and having an office or property or residing at a particular place, receiving of a fax message at a particular place, receiving telephone calls and maintaining statements of accounts of business, printing of letterheads indicating branch offices of the firm, booking of orders from a particular place are not the factors which would give rise to either wholly or in part cause of action conferring territorial jurisdiction to courts. In the said case, this Court also held that the mere service of notice is also not a fact giving rise to a cause of action unless such notice is an integral part of the cause of action".

(11) In *National Textile Corporation Ltd's case (supra)*, Supreme Court held to the following effect:-

"12 .1 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 petition 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. However, in order to avoid any further harassment to the parties and to put an end to the litigation, we would examine the matter on merits as well".

(12) A Division Bench of this Court in *Harvinder Singh versus Food Corporation of India*⁷ has considered a number of judgements of Supreme Court to return a finding that receipt of an order within the territorial jurisdiction of this court does not amount to a cause of action so as to permit the petitioner to invoke the jurisdiction of this Court. The argument of the petitioner in the aforesaid case was to the following effect:-

" On the strength of the above, it was argued by Shri Rajiv Atma Ram that communication of the order in fact means its actual receipt and cause of action accrues to the petitioner only on actual receipt of the order in the case of discharge of an employee so as to invoke the jurisdiction of this Court. The essence for giving cause of action, it is contended, is communication of the order by its actual receipt".

The Court held as under:-

"As already noticed above, the petitioner had not served within the territorial jurisdiction of this Court during his service of about two years with the FCI and remained posted in North East Zone of Food Corporation of India at Gangtok (Sikkim) or Siliguri etc. The impugned order dated 4.4.2002 of his discharge from respondent-Corporation was issued from New Delhi and was addressed to the petitioner through the Zonal Manager, (NE), FCI, Guwahati. The order, therefore, is deemed to have been communicated to

⁷ 2003(2) SCT 706

the petitioner at Guwahati in as much as it was out of the reach of the Managing Director, FCI, Headquarters New Delhi, after it was sent out and whatever action that was required to be taken by the petitioner was at the office of Zonal Manager, FCI, Guwahati . Even the relinquishment of charge and hand ing over the same was to be done by the petitioner at Guwahati. In these circumstances, the addressing of letter dated 12.4 .2002, Annexure P-6/ A, by the District Office of FCI Kapurthala does not per se confer any cause of action on the petitioner within the territorial jurisdiction of this Court. It would at the most only confer a right of action. The right of action is a right to enforce cause of action. It is a remedial right for affording redress for the infringement of a legal right. The right of action is a right which give rise to enforce a cause of action. The actual service of notice is only a mode of conveying the order".

(13) In view of the aforesaid judgements, it is apparent that receiving of a fax message, telephone call or having office or property or residence at a place of the petitioner does not confer jurisdiction. Even the service of notice also does not give rise to cause of action. Though notice before imposition is integral part of cause of action but its receipt at Ludhiana would not confer jurisdiction. In the present case, the proceedings for evasion of duty were initiated against the firm located in Surat. The penalty proceedings were initiated against the person/ firm located at different places i.e. Surat, Delhi, Bombay and Gaziabad. The penalty has been imposed on the petitioner under section 112 of the Act. None of the respondents fall within the territorial jurisdiction of this Court.

(14) The notice calling upon the petitioner providing an opportunity to show cause as to why penalty should not be imposed is a part of imposition of penalty. Once the penalty is imposed, such order is an appealable order. The show cause notice before imposition of penalty is necessary but mere receipt of notice by the petitioner within the jurisdiction of this Court will not confer territorial jurisdiction on this Court as the entire proceedings of sale of goods at the instance of the petitioner and the evasion of duty, if any, has taken place outside the territorial jurisdiction of this Court. The location of the petitioner is not determinative of the jurisdiction of this Court. On the other hand, it is the situs of the respondents, which is relevant for determining the place of occurrence of the cause of action. Therefore, it cannot be said

that the petitioner will have territorial jurisdiction to invoke the jurisdiction of this Court only on the basis of receipt of show cause notice within the jurisdiction of this Court. The process of order imposing penalty in respect of evasion of duty started and culminated beyond the jurisdiction of this Court.

(15) In view of the above, I am of the opinion that this Court does not have territorial jurisdiction to entertain the present writ petition. Consequently, the same is dismissed with liberty to the petitioner to take its remedy in accordance with law.

RAJESH BINDAL, J.

(16) I had the opportunity to go through the judgment delivered by Hemant Gupta, J. on the preliminary issue of territorial jurisdiction of this Court to entertain the writ petition filed by the petitioner challenging an order passed by respondent No.2 under Section 112 of the Customs Act, 1962 (for short, 'the Act').

(17) The facts of the case in detail have already been noticed in the judgment.

(18) The petition has been filed under Article 226 of the Constitution of India. Article 226 (2) is relevant for the purpose of consideration of territorial jurisdiction of this Court in the facts and circumstances of the present case, which is extracted below:

"226. Power of High Courts to issue certain writs.-(1) ...

xx xx xx

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 seat of such Government or authority or the residence of such person is not within those territories."

(19) Section 20(c) of the Code of Civil Procedure is also relevant, which is extracted below:

"20. Other suits to be instituted where defendants reside or cause of action arises. - Subject to the limitations aforesaid,

every suit shall be instituted in a Court within the local limits of whose jurisdiction –

(a) and (b) xx xx xx (c) the cause of action, wholly or in part, arises."

(20) A perusal of Article 226(2) of the Constitution of India clearly provides that the High Court can exercise jurisdiction in relation to a cause of action, wholly or in partly, arising within its jurisdiction notwithstanding the fact the seat of such government or authority or the residence of such person is not within the territorial jurisdiction of that High Court.

(21) For the purposes of deciding as to whether the facts averred by the petitioner would or would not constitute a part of cause of action to enable the petitioner to invoke jurisdiction of this Court, the first thing required to be considered is as to whether that action is integral part of cause of action. Even if a small fraction of cause of action arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain a petition. Reference can be made to a judgment of Hon'ble the *Supreme Court in Alchemist Ltd. and another versus State Bank of Sikkim and others*⁸.

(22) In *Om Prakash Srivastava versus Union of India and another*⁹ Hon'ble the Supreme Court opined that for enforcing the jurisdiction of a High Court, all what the petitioner has to establish is that a legal right claimed by him has *prima facie* been infringed and is threatened to be infringed within the territorial jurisdiction of the High Court concerned.

(23) In *Commissioner of Commercial Tax. Ranchi and another versus Swarn Rekha Cokes and Coals Pvt. Ltd. and others*¹⁰, Hon'ble the Supreme Court, while dealing with an issue of territorial jurisdiction of Patna High Court in a case, where a notification issued by the State of Bihar under Bihar Finance Act, 1981 exemption was to be claimed in the State of Jharkhand, opined that as the notification had been issued by the State of Bihar, the Court at Patna would have the jurisdiction though the party claiming relief and those who had to grant the relief were based in State of Jharkhand.

⁸ (2007) 11 SCC 335

⁹ (2006) 6 SCC 207

¹⁰ (2004) 136 STC 57

(24) In *Kusum Ingots & Alloys Ltd. versus Union of India and another*¹¹, Hon'ble the Supreme Court opined that even if a small fraction of cause of action accrues within the jurisdiction of a High Court, the High Court will have territorial jurisdiction to entertain the writ and the question of territorial jurisdiction to entertain a petition must be arrived solely on the basis of averments made in the petition, the truth or otherwise thereof being immaterial.

(25) In *K. Bhaskaran versus Sankaran Vaidhyan Balan and another*¹², Hon'ble the Supreme Court, while dealing with an issue of territorial jurisdiction for the purpose of filing of complaint under Section 138 of the Negotiable Instruments Act, held as under:

"14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. Following are the acts which are components of the said offence: (1) Drawing of the cheque, (2) Presentation of the cheque to the bank, (3) Returning the cheque unpaid by the drawee bank, (4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.

15. It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at 5 different localities. But concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Code. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:

"Where the offence consists of several acts done in different local areas, it may be inquired into or tried by a court having jurisdiction over any of such local areas.

16. Thus it is clear, if the five different acts were done in five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can choose any one of those courts having jurisdiction over any one of the local areas

¹¹ (2004) 6 SCC 254

¹² JT 1999 (7) SC 558

within the territorial limits of which any one of those five acts was done. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act."

(26) The next issue requires considerations as to whether service of notice on the petitioner would be an integral part of cause of action or not. In *M/s Swaika Properties and another's case (supra)*, Hon'ble the Supreme Court opined that if the service of notice is an integral part of cause of action, the court where the notice is served will have territorial jurisdiction.

(27) The dispute in the present case is regarding levy of penalty under Section 112 of the Act. Penalty proceedings are quasi criminal in nature. No one can be penalised without affording adequate opportunity of hearing. *Bombay High Court in Dowsyl Polymers Pvt. Ltd. and another versus M. G. Abrol. Special Secretary. Ministry of Finance and others*¹³ while considering an issue as to whether service of notice under Section 124(1) of the Act can be treated as part of cause of action, opined in favour of the proposition by holding that under the Act, no order confiscating any goods or imposing any penalty can be passed unless a notice is served on the owner of the goods or such person. Therefore, the Court where the notice is served to show cause as to why the penalty be not levied and subsequently even penalty order is served will have territorial jurisdiction to entertain the petition.

(28) Keeping in view the facts of the present case, where from a perusal of show cause notice dated 29.11.2004, it is evident that the same is addressed to the petitioner at his Ludhiana address. Even subsequent notices for affording opportunity to the petitioner for personal hearing were also addressed to the petitioner at his Ludhiana address and served there. Copy of order dated 24.3.2008 also mentions the address of the petitioner of Ludhiana where the same was served/ in my opinion, this Court will have territorial jurisdiction to entertain the petition filed by the petitioner.

¹³ 1987 (31) ELT 895

Jagmohan Bansal, Advocate, *for the petitioner.*

HPS Ghuman, Advocate, for the respondents.

AJAY KUMAR MITTAL, J.

(1) At motion stage, learned counsel for the respondents raised an objection regarding the territorial jurisdiction of this Court for entertaining the writ petition on the ground that order dated 18.3.2008 (Annexure P-9) had been passed by the Commissioner of Customs (Import) at Mumbai and, therefore, territorial jurisdiction of the Court at Mumbai would be there to adjudicate the dispute. It was also urged that the order was an appealable order.

(2) In view of the difference of opinion among the members of the Division Bench which had heard the matter at motion stage, this petition has been listed before me in pursuance of order passed by Hon'ble the Chief Justice.

(3) Briefly stated the facts as narrated in the petition are that the petitioner is aggrieved by the order dated 18.3.2008 (Annexure P-9), passed by the Commissioner of Customs (Import), Mumbai-II whereby penalty of Rs.50,00,000/- under Section 112(b) of the Customs Act, 1962 (in short "the Act") was imposed on the petitioner. The petitioner, a proprietorship concern, having factory premises within the jurisdiction of this Court, has invoked the writ jurisdiction of this Court as all communications have taken place within the jurisdiction of this Court. The petitioner is a manufacturing unit situated at Ludhiana and is exporting its products for the last more than 10 years. In the year 2001, the petitioner with an intent to manufacture a good quality of finished goods imported 48590 meter polyester fabric valued at Rs.9,54,396/-. At the time of filing of bill of entry, the custom duty involved was found to be Rs.16,15,418/-. Since the petitioner was not having funds to get the material cleared, the material was kept in bonded warehouse. The petitioner came in contact with a Delhi based broker who showed his willingness to buy the goods on high sea sales basis and such goods were sold to M/s Tirupati Exports. The said unit got its goods cleared without payment of duty against an advance licence. The Directorate of Revenue Intelligence, Surat (Gujarat), initiated its investigation against the said unit and it was revealed that the said unit had got cleared goods involving duty of Rs.2.60 crores without payment of duty against four advance licenses. The said unit had bought goods on high sea sales basis from a number of importers, including the petitioner. The Directorate of Intelligence issued a show

cause notice dated 29.11.2004 to the said unit raising a demand of customs duty of Rs.2.60 crores and as to why the goods be not confiscated under Section 111(o) of the Act. However, the goods were not available for confiscation. In addition thereto, the notices were issued to the petitioner along with other persons to show cause as to why penalty should not be imposed on them under Section 112 of the Act. The petitioner filed reply to the notice. The Commissioner of Customs (Adjudication), Mumbai vide order dated 31.12.2007 imposed a penalty of Rs.7,50,000/- on the petitioner. After the said order was passed, another order dated 18.3.2008, Annexure P-9, has been passed by the Commissioner of Customs (Import), Mumbai-II imposing penalty of Rs.50,00,000/- in pursuance of the show cause notice issued earlier.

(4) Learned counsel for the petitioner submitted that under Section 153 of the Act, the service of order, decision etc. is mandatory and, therefore, the service of notice would form integral part of cause of action. According to the learned counsel, the notice having been served at Ludhiana, this Court would have the territorial jurisdiction to adjudicate the dispute. Reliance was placed on *State of Rajasthan and others versus M/s Swaika Properties and another*¹⁴, *Kusum Ingots & Alloys Ltd. versus Union of India*¹⁵ and *Dowsyl Polymers Pvt. Ltd. and another versus M.G. Abrol, Special Secretary, Ministry of Finance and others*¹⁶ (Bom) in support of his submissions.

(5) On the other hand learned counsel for the respondent-revenue submitted that service of notice was not integral part of cause of action. According to him, no cause of action has arisen within the limits of this Court and as the notice was issued by the authorities at Mumbai, the Mumbai Court had the jurisdiction and there is lack of territorial jurisdiction of this Court.

(6) I have heard the learned counsel for the parties and perused the record.

(7) Before entering into the controversy in the present reference, it would be appropriate to examine the legal position. Clause (2) of Article 226 of the Constitution of India defines the jurisdiction of the High Court to issue writ. The aforesaid clause was originally

¹⁴ AIR 1985 SC 1289

¹⁵ 2004(168) ELT 3(SC)

¹⁶ 1987 (31) ELT 895

inserted as clause (1A) by the Constitution (Fifteenth Amendment) Act, 1963 and was renumbered as clause (2) by the Constitution (Forty Second Amendment) Act, 1976. It reads thus:-

“226. Power of High Courts to issue certain writs.-

(1) XX XX XX

(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 seat of such Government or authority or the residence of such person is not within those territories.

(3) XX XX XX

(4) XX XX XX”

(8) The term 'cause of action' as indicated in Article 226(2) of the Constitution has reference in Section 20(c) of the Code of Civil Procedure (in short “the Code”) as well. In view of Explanation to Section 141 of the Code, the provisions thereof would not apply to the writ proceedings, however, the phraseology used in Section 20(c) of the Code and Article 226(2) of the Constitution is similar. Under Section 20 (c) of the Code, the Court is vested with the jurisdiction to adjudicate a lis in respect of which the cause of action, wholly or in part arises within its local limits. Section 20(c) of the Code is in following terms:-

“20. Othersuits to be instituted where defendants reside or cause of action arises.- Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(a) XX XX XX

(b) XX XX XX

(c) the cause of action, wholly or in part, arises.

Explanation.- A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.”

(9) It would be apt to examine what is a cause of action or integral part of cause of action? Cause of action has not been defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which, if traversed, would be necessary for the plaintiff/petitioner to establish in order to support his right to the judgment of the court. Cause of action is a bundle of facts when taken together gives the plaintiff/petitioner a right to sue against the defendant/respondent. Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitutes the cause of action.

(10) Under Clause (2) of Article 226 of the Constitution, the High Court is empowered to issue writs, orders or directions to any Government, authority or person 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 seat of such Government or authority or the residence of such person is not within these territories. In other words, the High Court may exercise its power conferred by clause (1), where the cause of action, wholly or in part, arises within the territory over which it exercises jurisdiction. High Court must be satisfied from the entire facts pleaded in support of the cause of action that these facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction.

(11) Dealing with the expression “cause of action”, the Hon'ble Apex Court in *State of Rajasthan and other versus M/s Swaika Properties and another*¹⁷ had in para 8 observed as under:-

“The expression 'cause of action' is tersely defined in Mulla's Code of Civil Procedure:

“The 'cause of action' means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a Judgment of the Court.”

In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant.”

(12) The question of jurisdiction was considered in considerable detail in *Oil and Natural Gas Commission versus Utpal Kumar*

¹⁷ AIR 1985 SC 1289

Basu¹⁸. In this case, the writ petitioner had submitted the tender and made representations from Calcutta in response to an advertisement inviting tenders which were to be considered at New Delhi whereas the work was to be performed in Hazira (Gujarat) and had received replies to the fax messages at Calcutta, it was held that these could not constitute facts forming an integral part of cause of action. It was further held that the Calcutta High Court could not assume jurisdiction on the ground that the writ petitioner resides in or carries on business from a registered office in the State of West Bengal.

(13) In *Union of India versus Adani Exports Ltd. and another*¹⁹ the issue which came up for discussion was relating to territorial jurisdiction of the writ court. The writ petition was filed in the High Court of Gujarat claiming the benefit of the Passport Scheme under the Exim Policy. The passport was issued by the Chennai office and the entries were made therein by that office. The respondents were not stationed within the State of Gujarat. The High Court at Gujarat entertained the writ petition holding that it had territorial jurisdiction to assume jurisdiction. The writ petitioner had sought to justify the territorial jurisdiction with the following pleas:-

- “(i)the respondents carry on their business of export and import from Ahmedabad;
- (ii) their orders of export and import are placed from and are executed Ahmedabad;
- (iii)documents and payments for export and import are sent/made at Ahmedabad;
- (iv)the credit of duty claimed in respect of exports were handled from Ahmedabad since export orders were received at Ahmedabad and payments also received at Ahmedabad;
- (v) non-granting and denial of utilization of the credit in the passbook will affect the business of the respondents at Ahmedabad;
- (vi)the respondents have executed a bank guarantee through their bankers at Ahmedabad as well as a bond at Ahmedabad.”

Negating the contention of the writ petitioner, while

¹⁸ (1994) 4 SCC 711

¹⁹ (2002) 1 SCC 567

allowing the appeal and setting aside the order of the High Court, the Hon'ble Supreme Court held as under:-

“It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do not constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad.”

(14) *National Textile Corpn. Ltd. and others versus M/s Haribox Swalram and Ors*²⁰ was a case where the writ petitioner was carrying on business at Calcutta and the reply to the correspondence made by it was received at Calcutta. It was held that this would not form an integral part of the cause of action which could confer territorial jurisdiction on the Calcutta High Court to entertain the writ petition. The view to the contrary taken by the Division Bench of the High Court was set aside.

(15) In *Kusum Ingots & Alloys Ltd. versus Union of India (UOI) & Anr*²¹ the Head Office of the Company which was registered under the Indian Companies Act was at Mumbai. It obtained a loan from the Bhopal Branch of the State Bank of India. The Bank issued a notice for repayment of loan from Bhopal under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security

²⁰ JT 2004(4) SC 508

²¹ (2004) 6 SCC 254 : JT 2004 (Supp. 1) 475

Interest Act, 2002. The writ petition was filed in the High Court of Delhi which was dismissed on the ground of lack of territorial jurisdiction. The contention raised before the Hon'ble Supreme Court was that as the constitutionality of a Parliamentary legislation was questioned, the High Court of Delhi had the requisite jurisdiction to entertain the writ petition. The Apex Court did not accept the plea of the company and while upholding the order passed by the High Court ruled that passing of a legislation by itself does not confer any such right to file a writ petition in any Court unless a cause of action arises therefor. Referring to its earlier decision in *Oil and Natural Gas Commission's case (supra)*, it was held that all necessary facts must form an 'integral part' of the cause of action. The fact which is neither material nor essential nor integral part of the cause of action would not constitute a part of cause of action within the meaning of Clause (2) of Article 226 of the Constitution.

(16) In *Om Prakash Srivastava versus Union of India*²² the Hon'ble Supreme Court delving into the question as to what constitutes 'cause of action' for filing a writ petition in paras 7 and 8 noticed as under:-

“7. The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof.

8. Two clauses of Article 226 of the Constitution on plain reading give clear indication that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action wholly or in part had arisen within the territories in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or

²² (2006) 6 SCC 207

authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. (See *ONGC v. Utpal Kumar Basu*).”

(17) Enunciating the principle relating to territorial jurisdiction of writ court under Article 226 of the Constitution of India, the Hon'ble Apex Court in *Alchemist Ltd. And other versus State Bank of Sikkim*²³ observed as under:-

“From the aforesaid discussion and keeping in view the ratio laid down in catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the petitioner-appellant, would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a 'part of cause of action', nothing less than that.”

(18) From the above, it emerges that each and every fact pleaded in the writ petition does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Further, it is clear from reading of Article 226(2) of the Constitution that a High Court can exercise the jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises. The High Court would have territorial jurisdiction wherever there is integral part of cause of action arising within its local limits.

(19) Having examined the legal position, the core question in this reference would be whether service of notice as required by Section 153 of the Act would constitute cause of action, wholly or in part, so as to confer territorial jurisdiction upon this Court.

(20) Before proceeding further, it would be expedient to reproduce Section 153 of the Act as the case of the petitioner revolves on the interpretation of the aforesaid provision. Section 153 of the Act reads thus:-

²³ (2007) 11SCC 335

“**153. Service of order, decision, etc.-** Any order or decision passed or any summons or notice issued under this Act, shall be served,-

(a) by tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended or to his agent; or

(b) if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house.”

(21) The aforesaid provision specifies the manner in which any order, decision, summons or notice may be served. In terms of Clause (a) of Section 153 of the Act, the service of the order/decision/summons/notice shall be by tendering the same to the assessee. The other mode contemplated is by sending it by registered post. The methods indicated in Section 153(a) are alternative modes of service and anyone could be attempted in the first instance.

(22) Under clause (b) of Section 153, it is provided that where the order/decision/summons/notice cannot be served in the manner specified in clause (a), it shall be served by affixing it on the notice board of the customs house.

(23) Service of notice confers a right of action on a party to enforce cause of action. The actual service of notice is only a mode of conveying it. Service of notice can constitute integral part of cause of action only in one exceptional situation, where it is a *sine qua non* for assumption of jurisdiction by an authority. To establish that it would form integral part of cause of action, it is required to be shown that failure of service of notice would result in initiation of proceedings being rendered void abinitio. To put it differently, it shall not form integral part of cause of action where non-service of notice shall render the proceedings only illegal and not void abinitio.

(24) The question of territorial jurisdiction with reference to service of notice was examined in extenso by the Hon'ble Supreme Court in *Swaika Properties' case (supra)*. In this case, certain properties belonging to a company which had its registered office in Calcutta were sought to be acquired in Jaipur. A notice under Section 52 of the Rajasthan Urban Improvement Act was served upon the company at Calcutta. The question which arose for determination in such circumstances was whether the service of notice at the head office of the company at Calcutta could give rise to a cause of action within

the State of West Bengal to enable the Calcutta High Court to exercise jurisdiction in a matter where challenge to acquisition proceedings conducted in Jaipur was made. It was held that the entire cause of action culminating in the acquisition of the land under Section 152 of the aforesaid Act arose within the territorial jurisdiction of the Rajasthan High Court. It was also observed that it was not essential for the company to plead the service of notice upon them at Calcutta for grant of appropriate writ, order or direction under Article 226 of the Constitution for quashing the notice issued by the Rajasthan Government under Section 52 of the said Act. It was thus concluded that the Calcutta High Court had no jurisdiction to entertain the writ petition.

Discussing whether service of notice would confer territorial jurisdiction on a Court, it was noticed that:-

“The mere service of notice under S. 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. Within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under S. 52 (1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Art. 226 (2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The notification dated February 8, 1984 issued by the State Government under S. 52(1) of the Act became effective the moment it was published in the official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur under S. 52(2) for the grant of an appropriate writ, direction or order under Art. 226 of the Constitution for quashing the notification issued by the State Government under S. 52(1) of the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the

notification issued by the State Government of Rajasthan under S. 52(1) of the Act by a petition under Art. 226 of the Constitution, the remedy of the respondents for the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose.”

(25) In *Harvinder Singh versus Food Corporation of India*²⁴ the issue before the Division Bench of this Court was whether receipt of communication of the order at Kapurthala by the petitioner would mean that the cause of action in part had accrued within the territorial jurisdiction of this Court. The Division Bench noticed that the petitioner was charge sheeted and was being proceeded by way of department enquiry. The charge memo was issued from New Delhi which was addressed to the petitioner through its Senior Zonal Manager, North East Guwahati. The enquiry was being conducted at Guwahati. The reply was submitted to authority at Shillong for forwarding to New Delhi. The various transfer orders relating to the petitioner therein were in West Bengal region or North East region. The impugned order was issued from New Delhi addressed to the petitioner through Guwahati office but none of the offices were situated within the territorial jurisdiction of the Court except an order addressed by District Office at Kapurthala to the petitioner at his Kapurthala address which was within the territorial jurisdiction of the Court. It was an intimation relating to serving of office order issued from New Delhi. The petitioner had sought to invoke the jurisdiction of this Court by urging that since the impugned order was actually received by him within the territorial jurisdiction of this Court, therefore, this Court had territorial jurisdiction to resolve the lis.

The Division Bench holding that this Court was not having territorial jurisdiction and rejected the plea of the petitioner with the following observation:-

“As already noticed above, the petitioner had not served within the territorial jurisdiction of this Court during his service of about two years with the FCI and remained posted in North East Zone of Food Corporation of India a Gangtok (Sikkim) or Siliguri etc. The impugned order dated 4.4.2002 of his discharge from respondent-Corporation was issued from New Delhi and was addressed to the petitioner

²⁴ 2003(2)SCT 706

through the Zonal Manager (NF), FCI, Guwahati. The order, therefore, is deemed to have been communicated to the petitioner at Guwahati inasmuch as it was out of the reach of the Managing Director, FCI Headquarters New Delhi, after it was sent out and whatever action that was required to be taken by the petitioner was at the office of Zonal Manager, FCI, Guwahati. Even the relinquishment of charge and handing over the same was to be done by the petitioner at Guwahati. In these circumstances, the addressing of letter dated 12.4.2002 Annexure P-6/A by the District Office of FCI Kapurthala does not per se confer any cause of action on the petitioner within the territorial jurisdiction of this Court. It would at the most only confer a right action. The right of action is a right to enforce cause of action. It is a remedial right for affording redress for the infringement of a legal right. The right of action is a right which gives rise to enforce a cause of action. The actual service of notice is only a mode of conveying the order.”

(26) Reference is now made to judgment of the Bombay High Court in *Dowsyl Polymers Pvt. Ltd.'s case (supra)* on which heavy reliance has been placed by the learned counsel for the petitioner. The issue before the Bombay High Court was whether service of notice under Section 124 of the Act on the petitioner therein was an integral part of cause of action or not. The learned Single Judge recorded that the petitioner therein had imported a consignment which arrived in Cochin and the bill of entry was also presented to Collector of Customs at Cochin. According to the revenue, no part of the act had arisen in Bombay. However, the petitioner contended that the registered office of the petitioner was in Bombay and they had received the show cause notices in Bombay and were affected in Bombay. The learned Single Judge held that the judgment of the Apex Court in *Swaika's case (supra)* was distinguishable for the reason that the Apex Court therein had held the service of notice under Section 52(1) of the Rajasthan Act not to be integral part of cause of action whereas service of notice under Section 124 of the Act would form integral part of cause of action, as no order confiscating any goods or imposing any penalty can be passed unless the notice contemplated under the Act is served upon the owner of the goods or on such person who is made liable for the same.

(27) In my opinion, in view of the clear enunciation of law by

the Hon'ble Apex Court in *Swaika's case (supra)* and Division Bench of this Court in *Harvinder Singh's case (supra)*, the contrary view by the learned Single Bench of Bombay High Court in *Dowsyl Polymers Pvt. Ltd.'s case (supra)* would not come to the rescue of the petitioner.

(28) Now, taking up the facts in the present case, herein the impugned order dated 18.3.2008 (Annexure P-9) has been passed by the Commissioner of Customs (Import), Mumbai imposing penalty of Rs.50,00,000/-. It was the Directorate of Revenue Intelligence (DRI), Surat, Gujarat who had initiated its investigation against the petitioner. The entire proceedings relating to the sale of the goods by the petitioner and the evasion of duty had occurred outside the limits of this Court. A show cause notice was issued by DRI on 29.11.2004 in pursuance to which penalty was imposed by authorities at Mumbai. The respondents who had taken action against the petitioner, do not fall within the territorial jurisdiction of this Court. Thus, taking totality of facts and circumstances and also the averments made in the writ petition, it cannot be said that an integral part of cause of action arose within the territorial jurisdiction of this Court.

(29) In view of the above, the reference is answered against the assessee and it is held that this Court has no territorial jurisdiction to entertain the writ petition. The matter be listed as per roster after obtaining appropriate order from Hon'ble the Acting Chief Justice.

Shubreet Kaur