



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2837 OF 2021

Volvo Group India Pvt Ltd. formerly known)
as Volvo Buses India Pvt Ltd., a company)
incorporated under the Companies Act,)
1956 having its registered office at)
Yalachahally Village, Tavarekere Post,)
Hoskote, Bangalore – 562 122) ...Petitioner

V/s.

1. The Union of India)
through the Secretary, Ministry of Finance,)
Department of Revenue, 128-A/North Block)
New Delhi – 110 001)
2. Principal Commissioner RA & Ex-Officio)
Additional Secretary to the Government)
of India, 8th Floor, World Trade Centre,)
Cuff Parade, Mumbai – 400 005)
3. The Commissioner of Central Tax,)
& Central Excise, Bangalore-I)
Commissionerate, Central Revenue Building)
P. B. No.5400, Queen's Road,)
Bangalore – 560 001)
4. The Assistant Commissioner of Central)
Excise, Bangalore-I Division, Bangalore-I,)
Commissionerate, No.7, Girls School Street,)
Seshadripuram, Bangalore – 560 020) ...Respondents

WITH

WRIT PETITION NO.3128 of 2024

Siemens Limited)
a private limited company incorporated)
under the Companies Act, 1956 and having)
its registered office at Birla Aurora, Level)
21, Plot No.1080, Dr. Annie Besant Road,)
Worli, Mumbai – 400 030) Petitioner

V/s.

Gauri Gaekwad

1. The Union of India)
 through Ministry of Law and Justice,)
 Branch Secretariat, Aaykar Bhavan, Annex)
 Building, 2nd Floor, New Marine Line,)
 Mumbai – 400 020)

2. Principal Commissioner & Ex-Officio)
 Additional Secretary to the Government)
 of India, 8th Floor, World Trade Centre,)
 Cuff Parade, Mumbai – 400 025)

3. Commissioner of CGST & Customs, Goa)
 Old IPHB Complex, Near O/o. CEO,)
 Altinho, Panaji, Goa, India)

4. Asst. Commissioner of Central Goods &)
 Service Tax, Goa, Old IPHB Complex, Near)
 O/o. CEO, Altinho, Panaji, Goa, India)

...Respondents

**WITH
 WRIT PETITION NO.2188 OF 2022**

ABB Limited)
 having its factory at Plot No.79)
 Street No.17, MIDC Industrial Area)
 Satpur, Nashik – 422 007 and its registered)
 office at Khanija Bhavan, 2nd floor, East Wing)
 49, Race Course Road, Bengaluru – 560 001)

...Petitioner

V/s.

1. The Union of India)
 through the Secretary, Ministry of Finance)
 Department of Revenue, 128-A/North Block)
 New Delhi – 110 001)

2. Principal Commissioner & Ex-Officio)
 Additional Secretary to the Government)
 of India, 8th Floor, World Trade Centre,)
 Cuff Parade, Mumbai – 400 005)

3. The Commissioner of Central Excise,)
 Nashik Commissionerate, GST Bhawan,)
 Plot No.155, P-34, NH Jaishtha & Vaishakha,)

Gauri Gaekwad

Trimurti Chowk, CIDCO, Nashik – 422 008)

4. The Deputy Commissioner of Central)
Excise & CGST, Nashik-I Division, GST)
Bhawan, Plot No.155, P-34, NH Jaishtha)
& Vaishakha, Trimurti Chowk, CIDCO,)
Nashik – 422 008) ...Respondents

**WITH
WRIT PETITION NO.2910 OF 2021**

Volvo Group India Pvt Ltd. formerly known)
as Volvo Buses India Pvt Ltd., a company)
incorporated under the Companies)
Act, 1956 having its registered office at)
Yalachahally Village, Tavarekere Post,)
Hoskote, Bangalore – 562 122) ...Petitioner

V/s.

1. The Union of India)
through the Secretary, Ministry of Finance,)
Department of Revenue, 128-A/North Block,)
New Delhi – 110 001)

2. Principal Commissioner RA & Ex-Officio)
Additional Secretary to the Government)
of India, 8th Floor, World Trade Centre,)
Cuff Parade, Mumbai – 400 005)

3. The Commissioner of Central Tax,)
& Central Excise, Bangalore-I)
Commissionerate, Central Revenue Building,)
P. B. No.5400, Queen's Road,)
Bangalore – 560 001)

4. The Assistant Commissioner of Central)
Excise, Bangalore-I Division, Bangalore-I,)
Commissionerate, No.7, Girls School Street,)
Seshadripuram, Bangalore – 560 020) ...Respondents

**WITH
WRIT PETITION NO.3587 OF 2022**

India Yamaha Motor P. Limited, having its)
factory at Plot No.VV-I, SIPCOT Industrial)

Gauri Gaekwad

Park, Vallam Vadagal Village, Sriperumbudur)
Taluk, Kanchipuram – 602 105) Petitioner

V/s.

1. The Union of India)
through the Secretary, Ministry of Finance)
Department of Revenue, 128-A/North Block,)
New Delhi – 110 001)

2. Principal Commissioner RA & Ex-Officio)
Additional Secretary to the Government)
of India, 8th Floor, World Trade Centre,)
Cuff Parade, Mumbai – 400 005)

3. The Commissioner of CGST & Central)
Excise, Chennai Outer Commissionerate,)
No.2054-I, II Avenue, 12th Main Road,)
Newry Towers, Anna Nagar,)
Chennai – 600 034)

4. The Assistant Commissioner of GST)
& Central Excise, Sriperumbudur Division,)
Chennai Outer Commissionerate,)
C-48, TNHB Building, Anna Nagar,)
Chennai – 600 040)

...Respondents

**WITH
WRIT PETITION NO.5120 OF 2022**

Indorama Synthetics (I) Ltd.)
having its registered office at A-31, MIDC)
Industrial Area, Butibori, Nagpur – 441 007) Petitioner

V/s.

1. The Union of India)
through the Secretary, Ministry of Finance,)
Department of Revenue, 128-A/North Block,)
New Delhi – 110 001)

2. Principal Commissioner & Ex-Officio)
Additional Secretary to the Government)
of India, 8th Floor, World Trade Centre,)
Cuff Parade, Mumbai – 400 005)

Gauri Gaekwad

3. The Commissioner of Central Excise,)
 (Appeals), Nagpur, Kendriya Utpad Bhavan,)
 2nd Floor, Room No.221, Telangkhedi Road,)
 Civil Line, Nagpur – 440 001)

4. The Deputy Commissioner of Central)
 Excise, Division II, Nagpur, Telangkhedi)
 Road, Civil Line, Nagpur – 440 001) ...Respondents

Mr. Sriram Sridharan a/w. Mr. Shanmuga Dev and Ms. Nishtha Shrivastava for petitioner in all petitions.

Mr. Karan Adik a/w. Ms. Niyati Mankad for Respondent Nos.2 to 4 in WP/2188/2022.

Mr. Karan Adik a/w. Mr. Ram Ochani for Respondent Nos.3 and 4 in WP/3587/2022.

Mr. Jitendra B. Mishra a/w. Ms. Sangeeta Yadav and Mr. Umesh Gupta for Respondents in WP/2837/2021, WP/2910/2021 and WP/5120/2022.

Ms. Sangeeta Yadav for Respondents in WP/3128/2024.

Mr. Jitendra B. Mishra a/w Mr. Dhananjay B. Deshmukh and Mr. Rupesh Dubey for Respondents in WP/5120/2022.

Mr. Jitendra B. Mishra a/w. Ms. Sangeeta Yadav and Mr. Rupesh Dubey for Respondents in WP/2837/2021 and WP/2910/2021.

Mr. Karan Adik a/w. Mr. Satyaprakash Sharma for Respondents in WPL/3128/2024.

CORAM : K. R. SHRIRAM &

JITENDRA JAIN, JJ.

RESERVED ON : 4th SEPTEMBER 2024

PRONOUNCED ON : 5th SEPTEMBER 2024

JUDGMENT (PER K.R. SHRIRAM, J.) :

1 In all these six petitions listed today respondents raised a preliminary objection in relation to the maintainability of these petitions before Bench of this Court. The preliminary objection is that petitioners are required to file writ petitions before the High Courts within whose jurisdiction the original adjudication orders were passed. Having heard the

counsels, we shall demonstrate that the preliminary objection is not sustainable. We, therefore, proceed to deal with the limited question of jurisdiction. We are, at present, not concerned with the merits of the disputes between the parties for the matter has not yet been heard by us on merits. It is, therefore, not necessary to set out the facts in detail, except to the extent required to determine the issue of jurisdiction.

2 In all the petitions, except Writ Petition No.5120 of 2022, the orders in original, the orders in appeal and the orders passed by the Revisionary Authority, who is also a formal party, were against respective petitioners. In Writ Petition No.5120 of 2022 the order in original was in favour of petitioner but the order in appeal and the order of Revisionary Authority, against which the petition is filed, were against petitioners.

3 In all the petitions the averment is that the impugned order passed by the Revisionary Authority has been issued within the jurisdiction of this Court. The office of the Revisionary Authority is within the jurisdiction of this Court and, hence, the entire cause of action has arisen within the jurisdiction of this Court. Therefore, this Court has jurisdiction to entertain, try and dispose the petition.

4 The following Table gives the details of place of the adjudicating authorities who have passed the adjudication orders and in whose territorial jurisdiction of the High Courts they may fall :

Gauri Gaekwad

<i>Sr. No.</i>	<i>Writ Petition Number</i>	<i>Name of Petitioner</i>	<i>Place of Adjudicating Authority</i>	<i>High Court within whose jurisdiction adjudication order was passed</i>
1	WP/2837/2021	Volvo Group India Pvt. Ltd.	Bengaluru	Karnataka High Court at Bangalore
2	WP/2910/2021	Volvo Group India Pvt. Ltd.	Bengaluru	Karnataka High Court at Bangalore
3	WP/3128/2024	Siemens Ltd.	Goa	Goa Bench of Bombay High Court
4	WP/2188/2022	ABB Limited	Bengaluru	Karnataka High Court at Bangalore
5	WP/3587/2022	India Yamaha Motor Private Ltd.	Chennai	Madras High Court at Chennai
6	WP/5120/2022	Indorama Synthetics (I) Ltd.	Nagpur	Nagpur Bench of Bombay High Court

5 Petitioners have approached this Court against order passed by the Revisionary Authority constituted under Section 35EE of the Central Excise Act, 1944 (the Excise Act). Petitioners seek to challenge the legality and validity of orders passed by the Revisionary Authority rejecting the rebate claim filed by petitioners. Petitioners had filed a rebate claim for rebate of customs duty paid on the raw material purchased under Rule 18 of the Central Excise Rules, 2002 read with Notification No.21/2004-CE(NT) dated 6th September 2004. The show cause notices were issued rejecting the rebate claim on various grounds. We need not go further into those details to decide the issue of jurisdiction.

Gauri Gaekwad

6 In matters relating to excise duty and service tax, most appeals against orders of the Departmental Authorities lie before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) under Section 35B of the Excise Act. The Proviso to sub-section (1) of Section 35B, however, carves out certain exceptions. It says orders relating to the subjects specified in the proviso to sub-section (1) of Section 35B would not be appealable to the CESTAT under Section 35B. Those orders would be amenable to revision under Section 35EE by the Central Government. One such order would be relating to matters of rebate. Those will not be appealable to the CESTAT but would go before the Central Government under Section 35EE.

7 Rule 10 of the Central Excise (Appeals) Rules, 2001 provides that all revisions under Section 35EE would lie before jurisdictional Principal Commissioner (Revisionary Authority). The jurisdiction of Revisionary Authority is specified as follows :

<i>Sr. No.</i>	<i>Office</i>	<i>Jurisdiction to hear Revision Applications against Commissioner (Appeals) Order (State-wise and Union-Territory wise)</i>
1	Principal Commissioner (RA) and ex-officio Additional Secretary to the Government of India- Delhi	Jammu & Kashmir, Himachal Pradesh, Punjab, Chandigarh, Uttar Pradesh, Delhi, Haryana, Uttarakhand, Bihar, Jharkhand, West Bengal, Andaman & Nicobar Islands, Sikkim, Odisha, Rajasthan, Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Tripura.

Gauri Gaekwad

2	Principal Commissioner (RA) and ex-officio Additional Secretary to the Government of India – Mumbai	Andhra Pradesh, Telangana, Karnataka, Kerala, Lakshadweep, Puducherry, Tamil Nadu, Gujarat, Dadra and Nagar Haveli, Daman and Diu, Maharashtra, Goa, Madhya Pradesh, Chhattisgarh.
---	---	--

8 As is clear from the above, the Revisionary Authority sits only in two locations, i.e., in Delhi and in Mumbai. Hence, rebate matters arising from all of the States of southern India would lie before the Revisionary Authority sitting in Mumbai. In the present case, all writ petitions pertain to issues relating to rebate wherein the Revisionary Authority has denied petitioners' claims for rebate. Furthermore, no statutory appeal has been provided for against an order passed under Section 35EE of the Excise Act. Therefore, an aggrieved assessee possesses no alternate remedy other than challenging an order under Section 35EE via a writ petition under Article 226 of the Constitution of India.

9 It is respondents contention that petitioners should file writ petitions challenging the orders of the Revisionary Authority before the Madras High Court, Karnataka High Court, Goa Bench of this Court or the Nagpur Bench of this Court.

10 **Mr. Sridharan submitted as under :**

(i) Where the original lis arises in one area falling under the jurisdiction of one High Court and the appellate order is passed in another

area falling under the jurisdiction of another High Court, petitioner has the right to choose to file a writ petition under Article 226 before either of the two High Courts.

(ii) In *Sri Nasiruddin v/s. State Transport Appellate Tribunal*¹ and *Kusum Ingots & Alloys Ltd. v/s. Union of India*², the Hon'ble Apex Court has held that if the cause of action arises in part within one area and another part arises in another area it would be open to the litigant, who is the dominus litis, to have his forum conveniens. The litigant has the right to go to a Court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular Court. The choice is by reason of the jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of the Court. Therefore, if the cause of action can be said to have arisen partly within one area and partly outside the said area, the litigant will have the choice to file writ petition under Article 226 of the Constitution of India before either of the two High Courts.

(iii) The order of the Revisionary Authority constitutes a part of cause of action. A writ petition would be maintainable in the High Court within whose jurisdiction it is situated which will be this Court having regard to the fact that the order of the Revisionary Authority is also

1 AIR 1976 SC 331

2 2004 (168) E.L.T. 3 (SC)

required to be set aside and as the order of the original authority merges with that of the order of Revisionary Authority.

(iv) It is settled position that once an appeal is decided by an Appellate Authority, the order of the original authority gets merged with the order of the Appellate Authority by principles of doctrine of merger. In effect, the order of the original authority no longer remains, and it is the order of the Appellate Authority which prevails and is amenable to challenge.

(v) The order of the Appellate Authority forms a significant part of the cause of action for petitioner. As held in *Collector of Customs, Calcutta v/s. East India Commercial Co. Ltd., Calcutta*³, the order of the original authority becomes merged with the order of the Revisionary Authority. Therefore, if the Appellate Authority is beyond the territorial jurisdiction of the High Court, it would not be open to issue a writ to the original authority which is within its jurisdiction so long as it cannot issue a writ to the Appellate Authority. For example, if petitioner approaches the Karnataka High Court, where the adjudicating authority is situated in some of the petitions, the Karnataka High Court will not be able to issue writ even to the original authority.

3 AIR 1963 SC 1124

(vi) Prior to the amendment of Article 226⁴ and the insertion of Article 226(2), the Hon'ble Supreme Court has specifically held that on account of the principle of the doctrine of merger, a writ against an order of the Appellate Authority, would lie only before the High Court within whose territorial jurisdiction the Appellate Authority is located. This principle would continue to hold the field today. By the insertion of Article 226(2), jurisdiction was bestowed upon the High Courts to issue writs to authorities located outside their territorial jurisdiction as long as the cause of action arose within their territorial jurisdiction. Consequently, even the High Court within whose jurisdiction the original lis arose could now issue writs to the Appellate Authority located outside its territorial jurisdiction. This would not, however, in any way denude the powers of the High Court within whose territorial jurisdiction the Appellate Authority is located to issue writs.

(vii) This has been confirmed by the co-ordinate Bench of this Court in *Kishore Rungta v/s. Punjab National Bank*⁵ and a Full Bench of the

4 226. Power of High Courts to issue certain writs – (1) Notwithstanding anything in article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrantor and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(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.

XXXXXXXXXXXXXXXXXXXX

5 2003 (151) E.L.T. 502 (Bom.)

Gauri Gaekwad

Hon'ble Madras High Court in *Sanjos Jewellers v/s. Syndicate Bank*⁶ where it has been held that the Court would have jurisdiction when the Appellate Authority, whose order is subject to scrutiny, is situated within its jurisdiction and the party would have the right to choose either of the Courts.

(viii) In light of the above, the present petitions are maintainable before the Principal Seat of this Court since the orders of the adjudicating authorities have merged into the impugned orders of the Revisionary Authority who is located in Mumbai.

11 **Mr. Mishra submitted as under :**

(i) It cannot be stated that substantial or material or integral facts construing a cause of action has arisen within jurisdiction of this Court. At the most it can be stated only a slender part of cause of action has arisen within the jurisdiction of this Court as against major part of cause of action arising outside the jurisdiction of this Court. Therefore, this Court may not entertain the petitions on the ground of forum conveniens.

(ii) The contesting respondents are all situated either in Bangalore or Goa or Chennai or Nagpur whereas, the Revisionary Authority is only a proforma party in the facts of this case. Even in the absence of respondent no.2, this petition could have been filed. Respondent no.2 may be proper party but not necessary party. Since petitioners and the contesting

6 2007 (5) CTC 305

respondents are based outside, the High Courts within whose jurisdiction those parties are situated would be most appropriate Court to entertain these petitions. In *State of Goa v/s. Summit Online Trade Solutions Pvt. Ltd.*⁷ and *Kusum Ingots & Alloys Ltd.* (Supra) the Hon'ble Apex Court has held that even if a small part of the cause of action arises within territorial jurisdiction of a High Court, the same by itself could not have been a determinative factor.

(iii) The Larger Bench of Delhi High Court (5 judges) in *Sterling Agro Industries Ltd. v/s. Union of India*⁸ has held that while entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case.

(iv) In *Dharampal Premchand Ltd. v/s. Commissioner of Central Excise*⁹, the Delhi High Court has held that situs of the Tribunal would not be part of cause of action.

(v) In *BSS Mines and Minerals Pvt. Ltd. v/s. Union of India and Ors.*¹⁰, this Court has observed that though the Tribunal is situated at Mumbai but the original authority before the Tribunal was the Commissioner, Central Excise at Nagpur and, therefore, the petition is to be filed before the Nagpur Bench.

7 2003 (7) SCC 791

8 2011 (270) E.L.T. 477 (Del.)

9 2012 (277) E.L.T. 23 (Del.)

10 2023 : BHC-OS : 9444-DB

(vi) The Hon'ble Gujarat High Court in ***Bhavendra Hashmukhlal Patadia v/s. Union of India***¹¹ has held that the principle of forum conveniens also makes it obligatory on the part of the Court to see the convenience of all the parties before it. The existence of a more appropriate forum, expenses, law relating to the lis, convenience of the witnesses, verification and examination of the facts for adjudication of the controversy and other similar and ancillary aspects. The Court has further held that even in a scenario where a part cause of action has arisen within one High Court's territorial jurisdiction, that High Court can still refuse to exercise jurisdiction under Article 226 on account of other consideration as defined under the concept of "forum conveniens".

(vii) In ***Kohli Roadlines, Nagpur v/s. Maharashtra State Power Generation Company***¹², this Court declined to exercise jurisdiction by saying that even if the contention of petitioner that part of cause of action has arisen within the territorial limits of this Court is accepted, on the doctrine of 'forum conveniens', we are not inclined to entertain the writ petition. Even in *Sri Nasiruddin* (Supra), relied upon by petitioner, the Court held that the Court will find out in each case whether the jurisdiction of the Court is rightly attracted by the alleged cause of action. *East India Commercial Co. Ltd.* (Supra), relied upon by petitioner, is not applicable in

11 2022 : GUJHC : 20225-DB

12 2023 SCC OnLine Bom 638

the facts and circumstances of the case and that judgment was passed prior to the insertion of Article 226(2) of the Constitution of India.

(viii) Therefore, in the facts and circumstances of each of the petitions it will be either Bangalore or Goa or Chennai or Nagpur that would be most convenient forum and hence, this Court may not entertain the petitions even though the situs of Revisionary Authority, who has passed the impugned order, is within territorial limits of this Court.

12 **Mr. Adik submitted as under :**

(i) At the outset adopted the submissions of Mr. Mishra.

(ii) The Central Government in exercise of powers conferred under Section 37 of the Excise Act keeps amending the rules under the Central Excise (Appeals) Rules, 2001. The Central Government by such amendments keeps altering the jurisdiction to be exercised by the Principal Commissioner (Revisionary Authority) from time to time. Therefore, the situs of the Revisionary Authority cannot be a factor to decide the jurisdiction.

(iii) The Delhi High Court in *West Coast Ingots (P) Ltd. v/s. Commissioner of Central Excise, New Delhi*¹³ did not entertain the writ petition while deciding whether the Delhi High Court should exercise territorial jurisdiction in the matter only because the impugned order has been made by the Principal Bench of the Settlement Commission in Delhi

13 2007 (209) E.L.T. 343 (Del.)

notwithstanding the fact that petitioners themselves were located in Goa and the show cause notices were issued by the Commissioner of Central Excise in Goa. The Court held that significant part of the cause of action cannot be said to arise within the territorial jurisdiction of that Court merely because the impugned order has been passed by the Settlement Commission located within its territorial jurisdiction, when the events leading to the filing of the proceedings before such Commission, and the parties to such proceedings, are outside the territorial jurisdiction of the Court.

FINDINGS :

13 It is the submission of petitioners that since the impugned orders have been passed by the Revisionary Authority who is located within the territorial jurisdiction of the Principal Seat of this Court, if not the whole, certainly a significant part of the cause of action arises herein. In such a scenario, petitioners submitted that petitioner has the right to choose whether he wishes to approach the Principal Seat of this Court or go before the High Court or the Bench of this Court at Nagpur or Goa within whose territorial jurisdiction the original adjudication arose. Such a choice is not forum shopping but his right of choice as an aggrieved litigant. This position is directly covered by the decisions of the Hon'ble Supreme Court in *Sri Nasiruddin* (Supra) and *Kusum Ingots & Alloys Ltd.* (Supra).

Gauri Gaekwad

14 The decision of the Four Judge Bench in *Sri Nasiruddin* (Supra) directly applies to the facts and circumstances of the case at hand. The question in *Sri Nasiruddin* (Supra) was whether a writ against an appellate order would lie before the Lucknow Bench or the Allahabad Bench of the Hon'ble Allahabad High Court in cases where the original lis arose in Allahabad but the seat of the appellate forum was in Lucknow. Paragraphs 36, 37, 38 and 39 of the judgment, reads as under :

36. The meaning of the expression "in respect of cases arising in such areas in "Oudh" in the first proviso to paragraph 14 of the order was answered by the High Court that with regard to applications under Article 226 the same will be "a case arising within the areas in oudh, only if the right of the petitioner in such an application arose first at a place within an area in oudh. The implication according to the High Court is that if the right of the petitioner arose first at any place outside any area in oudh and if the subsequent orders either in the revisional or appellate stage were passed by an authority within an area in oudh then in such cases the Lucknow Bench would not have any jurisdiction. The factor which weighed heavily with the High Court is that in most cases where an appeal or revision would lie to the State Government, the impugned order would be made at Lucknow and on that view practically all writ petitions would arise at Lucknow.

37. The conclusion as well as the reasoning of the High Court is incorrect. It is unsound because the expression "cause of action" in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow then Lucknow would have jurisdiction though the original order was passed at a place outside the areas in oudh. It may be that the original order was in favour of the person applying for a writ. In such case an adverse appellate order might be the cause of action. The expression "cause of action is well-known. If the cause of action arises wholly or in part at a place within the specified oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action

arises in part within the specified areas in oudh it would be open to the litigant who is the dominus litis to have his forum conveniens. The litigant has the right to go to a Court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular Court. The choice is by reason of the jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of the Court. Similarly, if the cause of action can be said to have arisen part within specified areas in oudh and part outside the specified oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Lucknow. The Court will find out in each case whether the jurisdiction of the Court rightly attracted by the alleged cause of action.

38. To sum up. Our conclusions are as follows. First there is no permanent seat of the High Court at Allahabad. The seats at Allahabad and at Lucknow may be changed in accordance with the provisions of the order. Second, the Chief Justice of the High Court has no power to increase or decrease the areas in oudh from time to time. The areas in oudh have been determined once by the Chief Justice and, therefore, there is no scope for changing the areas. Third, the Chief Justice has power under the second proviso to paragraph 14 of the order to direct in his discretion that any case or class of cases arising in oudh areas shall be heard at Allahabad. Any case or class of cases are those which are instituted at Lucknow. The interpretation given by the High Court that the word "heard" confers powers on the Chief Justice to order that any case or class of cases arising in oudh areas shall be instituted or filed at Allahabad, instead of Lucknow is wrong. The word "heard" means that cases which have already been instituted or filed at Lucknow may in the discretion of the Chief Justice under the second proviso to paragraph 14 of the order he directed to be heard at Allahabad. Fourth, the expression "cause of action" with regard to a civil matter means that it should be left to the litigant to institute cases at Lucknow Bench or at Allahabad Bench according to the cause of action arising wholly or in part within either of the areas. If the cause of action arises wholly within oudh areas then the Lucknow Bench will have jurisdiction. Similarly, if the cause of action arises wholly outside the specified areas in oudh then Allahabad will have jurisdiction. If the cause of action in part arises in the specified oudh areas and part of the cause of action arises outside the specified areas, it will be open to the litigant to frame the case appropriately to attract the jurisdiction either at Lucknow or at Allahabad. Fifth, a criminal case arises where the offence has been committed or otherwise as provided in the Criminal Procedure Code. That will attract the jurisdiction of the Court at Allahabad or

Lucknow. In some cases depending on the facts and the provision regarding jurisdiction, it may arise in either place.

39. Applications under Article 226 will similarly lie either at Lucknow or at Allahabad as the applicant will allege that the whole of cause of action or part of the cause of action arose at Lucknow within the specified areas of oudh or part of the cause of action arose at a place outside the specified oudh areas.

(emphasis supplied)

15 The Court held that if the cause of action arises wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises in part within the specified areas in Oudh it will be open to the litigant, who is the dominus litis, to have his forum conveniens. The litigant has the right to go to a Court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular Court. The choice is by reason of the jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of the Court.

16 This has been reiterated in *Kusum Ingots & Alloys Ltd.* (Supra) wherein the Hon'ble Supreme Court held keeping in view the expressions used in Article 226(2) of the Constitution of India indisputably even if a small fraction of cause of action accrues within the jurisdiction of the High Court, the High Court will have jurisdiction in the matter. However, even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative

factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. Paragraphs 25, 27, 29 and 30 held as follows :

25. The said decision is an authority for the proposition that the place from where an appellate order or a revisional order is passed may give rise to a part of cause of action although the original order was at a place outside the said area. When a part of the cause of action arises within one or the other High Court, it will be for the petitioner to choose his forum.

26. xxxxxxxxxxxxxxxx

27. When an order, however, is passed by a Court or Tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. In other words as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority.

28. xxxxxxxxxxxxxxxx

29. In view of clause 2 of Article 226 of the Constitution of India now if a part of cause of action arises outside the jurisdiction of the High Court, it would have jurisdiction to issue a writ. The decision in Khajoor Singh (supra) has, thus, no application.

30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

(emphasis supplied)

17 Therefore, since the Revisionary Authority is located within the territorial jurisdiction of the Principal Seat of this Court, petitioner has the option to file the petitions here or before the High Court within whose jurisdiction the original adjudication occurred. Petitioners have the right to file the petitions before the Principal Seat of this Court. Hence, on this ground alone, the present petitions are maintainable before the Principal Seat of this Court.

18 It is also trite that once an appeal is decided by an Appellate Authority, the order of the original authority gets merged with the order of the Appellate Authority by the principle of doctrine of merger. In effect, the order of the original authority no longer remains, and it is the order of the Appellate Authority which prevails and is amenable to challenge.

Hence, the order of the Appellate Authority forms a significant part of the cause of action for petitioner. We find support in *East India Commercial Co. Ltd.* (Supra), where the only question that fell for decision was whether the High Court would have jurisdiction to issue a writ against the Collector of Customs, Calcutta, inspite of the fact that his order was taken in appeal to the Central Board of Revenue against which the High Court could not issue a writ and the appeal had been dismissed. This was answered as under:

4. The question therefore turns on whether the order of the original authority becomes merged in the order of the

appellate authority even where the appellate authority merely dismisses the appeal without any modification of the order of the original authority. It is obvious that when an appeal is made, the appellate authority can do one of three things, namely, (i) it may reverse the order under appeal, (ii) it may modify that order, and (iii) it may merely dismiss the appeal and thus confirm the order without any modification. It is not disputed that in the first two cases where the order of the original authority is either reversed or modified it is the order of the appellate authority which is the operative order and if the High Court has no jurisdiction to issue a writ to the appellate authority it cannot issue a writ to the original authority. The question therefore is whether there is any difference between these two cases and the third case where the appellate authority dismisses the appeal and thus confirms the order of the original authority. It seems to us that on principle it is difficult to draw a distinction between the first two kinds of orders passed by the appellate authority and the third kind of order passed by it. In all these three cases after the appellate authority has disposed of the appeal, the operative order is the order of the appellate authority whether it has reversed the original order or modified it or confirmed it. In law, the appellate order of confirmation is quite as efficacious as an operative order as an appellate order of reversal or modification. Therefore, if the appellate authority is beyond the territorial jurisdiction of the High Court it seems difficult to hold even in a case where the appellate authority has confirmed the order of the original authority that the High Court can issue a writ to the original authority which may even have the effect of setting aside the order of the original authority when it cannot issue a writ to the appellate authority which has confirmed the order of the original authority. In effect, by issuing a writ to the original authority setting aside its order, the High Court would be interfering with the order of the appellate authority which had confirmed the order of the original authority even though it has no territorial jurisdiction to issue any writ to the appellate authority. We therefore feel that on principle when once an order of an original authority is taken in appeal to the appellate authority which is located beyond the territorial jurisdiction of the High Court, it is the order after the appeal is disposed of; and as the High Court cannot issue a writ against the appellate authority for want of territorial jurisdiction it would not be open to it to issue a writ to the original authority which may be within its territorial jurisdiction once the appeal is disposed of, though it may be that the appellate authority has merely confirmed the order of the original authority and dismissed the appeal.

5. It is this principle, viz., that the appellate order is the operative order after the appeal is disposed of, which is in our opinion the basis of the rule that the decree of the lower court merges in the decree of the appellate court, and on the same principle it would not be incorrect to say that the order of the original authority is merged in the order of the appellate authority whatsoever its decision-whether of reversal or modification or mere confirmation. This matter has been considered by this Court on a number of occasions after the decision in Saka Venkata Subba Rao's case.

6. xxxxxxxxxxxxxxxx

7. xxxxxxxxxxxxxxxx The argument based on the principle of merger was repelled by this Court in that case on two grounds, namely, (i) that the principle of merger applicable to decrees of courts would not be applicable to departmental tribunals, and (ii) that the original order would be operative on its own strength and did not gain greater efficacy by the subsequent order of dismissal of the appeal or revision. in effect, this means that even if the principle of merger were applicable to an order of dismissed like the one in Mohammad Nooh's case the fact would still remain that the dismissal was before the Constitution came into force and therefore the person dismiss could not take advantage of the provisions of the Constitution, so far as that dismissal was concerned. That case was not concerned with the territorial jurisdiction of the High Court where the original authority is within such territorial jurisdiction while the appellate authority is not and must therefore be confined to the special facts with which it was dealing. We have therefore no hesitation in holding consistently with the view taken by this Court in Mudaliar's case as well as in Messrs. Amritlal Bhogilal's case that the order of the original authority must be held to have merged in the order of the appellate authority in a case like the present and it is only the order of the appellate authority which is operative after the appeal is disposed of. Therefore, if the appellate authority is beyond the territorial jurisdiction of the High Court it would not be open to it to issue a writ to the original authority which is within its jurisdiction so long as it cannot issue a writ to the appellate authority. It is not in dispute in this case that no writ could be issued to the appellate authority and in the circumstances the High Court could issue no writ even to the original authority. We therefore allow the appeal, set aside the order of the High Court and dismiss the writ petition with costs.

(emphasis supplied)

Therefore, the Court held that the order of the original authority must be held to have merged in the order of the Appellate Authority in a case like the present and it is only the order of the Appellate Authority which is operative after the appeal is disposed of.

19 Therefore, prior to the amendment of Article 226 and the insertion of Article 226(2), the Hon'ble Supreme Court has specifically held that on account of the principle of the doctrine of merger, a writ against an order of the Appellate Authority, would lie only before the High Court within whose territorial jurisdiction the Appellate Authority is located. This principle would continue to hold the field today. Vide the insertion of Article 226(2), jurisdiction was bestowed upon the High Courts to issue writs to authorities located outside their territorial jurisdiction as long as the cause of action arose within their territorial jurisdiction. Consequently, even the High Court within whose jurisdiction the original lis arose could now issue writs to the Appellate Authority located outside its territorial jurisdiction. However, this would not in any way denude the powers of the High Court within whose territorial jurisdiction the Appellate Authority is located to issue writs. The fact remains that the appellate order is a significant part of the cause of action for petitioner.

20 This has been confirmed by the co-ordinate Bench of this Court in *Kishore Rungta v/s. Punjab National Bank*¹⁴ and a Full Bench of the

¹⁴ 2003 (151) E.L.T. 502 (Bom.)

Hon'ble Madras High Court in *Sanjos Jewellers v/s. Syndicate Bank*¹⁵ where it has been held that the Court would have jurisdiction when the Appellate Authority, whose order is subject to scrutiny, is situated within its jurisdiction and the party would have the right to choose either of the Courts. In *Sanjos Jewellers* (Supra), a writ petition was filed before the Hon'ble Madras High Court challenging an order of the Debt Recovery Appellate Tribunal which was situated at Chennai. Respondent's contention was that since the original adjudication proceedings happened at the Debt Recovery Tribunal located at Bangalore, the writ petition against the order of the Appellate Tribunal was not maintainable before the Hon'ble Madras High Court. The Hon'ble Full Bench relied upon the decision of the Hon'ble Supreme Court in *Kusum Ingots & Alloys Ltd.* (Supra) and held that the order of the Appellate Authority constitutes a part of the cause of action and that a writ petition against the appellate order was maintainable before the High Court within whose territorial jurisdiction the Appellate Authority was situated.

21 In light of the above, the present petitions are maintainable before the Principal Seat of this High Court since the orders of the adjudicating authorities have merged into the impugned orders of the Revisionary Authority who is located in Mumbai.

15 2007 (5) CTC 305

22 Dealing with the case of respondents, in our view, the stand of Mr. Mishra and Mr. Adik on behalf of respondents in relation to forum conveniens is not applicable to the facts and circumstances of the present matter.

23 Relying on *Kusum Ingots & Alloys Ltd.* (Supra) and the decision of the Five Judge Bench of the Delhi High Court in *Sterling Agro Industries Ltd.* (Supra) it was submitted by respondents that petitioners are unsuited by the principle of forum conveniens. This was made relying on paragraph 30 of *Kusum Ingots & Alloys Ltd.* (Supra) that is quoted in paragraph 16 above.

 In our view that has no application to the facts and circumstances of the matter at hand. In the present case, it is not that only a small part of the cause of action arose in Mumbai. Rather the order of the Revisionary Authority is a significant part of the cause of action of petitioner. This is the law laid down by the Hon'ble Supreme Court in *East India Commercial Co. Ltd.* (Supra).

24 In fact, the decision in *Sterling Agro Industries Ltd.* (Supra) supports the case of petitioner. In paragraph 33(c), it was specifically held that the order of the Appellate Authority constitutes a part of the cause of action to make the writ petition maintainable in the High Court within whose territorial jurisdiction the Appellate Authority is situated. Paragraph

33(c) reads as under :

33(c). An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. xxxxxxxxxxxxxxxxx

It was further held [as held in *Kusum Ingots & Alloys Ltd.* (Supra)] that the High Court may, in its discretion, invoke the doctrine of forum conveniens. It only overruled a previous decision of a Full Bench of the Delhi High Court which held that the location of the Appellate Authority is the place of forum conveniens in absolute terms. In our view, this clearly supports the contention of petitioners that petitioners have the right to choose to file the petitions here before the Principal Seat of this Court and as also before the High Court or the Bench of this Court within whose jurisdiction the original lis arose.

25 Respondents being the Union of India are located across the entire country and it is not proper to allege forum inconvenience. What is inconvenient in this forum was not even stated by respondents. In fact, respondents never had a problem in defending their case before the Revisionary Authority. If that be the case, it is not open for respondents to raise this objection before the High Court at this stage.

26 The judgments relied upon and cited by respondents have no application to the matter at hand. In the matter at hand, the order of the Revisionary Authority has been passed in Mumbai and hence, clearly a

Gauri Gaekwad

significant portion of the cause of action arises in Mumbai. In the compilation, many other judgments were also submitted by respondents but were not referred to during the arguments or in the written submissions. Hence we are not dealing with those judgments. We shall now deal with the judgments cited by respondents :

(a) Summit Online Trade Solutions Pvt. Ltd. (Supra) :

This was a writ petition filed before the Sikkim High Court challenging a notification issued by the Goa State Tax Department under Goa GST Act. The High Court dismissed the writ petition on the ground that no case was made out as to how part of cause of action arose within the territorial limits of the High Court of Sikkim or any pleading as to how any right has been affected within the territory of Sikkim. The Hon'ble Supreme Court upheld the dismissal of the writ petition by the Sikkim High Court. While upholding, the Hon'ble Supreme Court relied on the concept of forum conveniens as held by the Hon'ble Supreme Court in *Kusum Ingots & Alloys Ltd.* (Supra).

(b) Kohli Roadlines, Nagpur (Supra) :

This is a matter pertaining to a writ petition challenging a tender floated by the Maharashtra State Power Generation Company before the Nagpur Bench of this Court. The High Court rejected the writ petition for absence of cause of action or even part thereof arising at the Nagpur

Bench of this Court.

(c) Bhavendra Hashmukhlal Patadia (Supra) :

This is a matter involving an income tax notice issued by the Orissa Income Tax authority under Section 148 of the Income Tax Act, 1961, challenged before Hon'ble Gujarat High Court. The Hon'ble Gujarat High Court dismissed the writ petition on the ground of lack of territorial jurisdiction. The Court held that just because the applicant is resident at Ahmedabad, State of Gujarat, by itself, will not confer jurisdiction to his High Court, more particularly, when the writ applicant is being assessed to tax consistently at Cuttack.

These decisions have no application to the present matter. In the present matter, the order of the Revisionary Authority has been passed in Mumbai and hence, clearly a significant portion of the cause of action arises in Mumbai.

(d) BSS Mines and Minerals Pvt. Ltd. (Supra) :

In this matter, petitioner therein withdrew his petition. It is settled law that such orders do not contain any ratio decidendi and have no binding precedential value.

(e) Dharampal Premchand Ltd. (Supra) :

This matter pertains to the issue as to which High Court would appeals against orders of the CESTAT under Section of the 35G of the

Gauri Gaekwad

Central Excise Act, 1944 lie.

This decision has no relevance since the present petitions relate to the jurisdiction of this Court under Article 226 of the Constitution of India.

(f) West Coast Ingots (P) Ltd. (Supra) :

In this case, writ petitions were filed challenging the orders of the Settlement Commission which was situated at Delhi. In that matter, settlement applications were filed by the assesseees against show cause notices issued in Goa. The assesseees were located in Goa and the relevant Departmental Authorities were also located in Goa. The Delhi High Court declined to accept the writ petition and directed the assesseees to approach the High Court in whose jurisdiction the show cause notices has been issued.

An order of the Settlement Commission stands on a wholly different footing than an order of an Appellate Authority in appeal or revision. The doctrine of merger, in our view, would not be applicable to such orders of the Commission and the orders/notices do not merge into the orders of the Commission. Hence, the decision stands on a wholly different footing than the facts and circumstances of the present matter.

27 In the matter at hand, the ratio of the Hon'ble Supreme Court in *East India Commercial Co. Ltd.* (Supra) and *Sri Nasiruddin* (Supra)

would be squarely applicable. In fact, the findings of the Hon'ble Supreme Court in paragraphs 25 and 27 of *Kusum Ingots & Alloys Ltd.* (Supra) quoted in paragraph 16 above would also be squarely applicable.

28 Therefore, we hold that this Court has jurisdiction in the present petitions.

29 The petitions stand adjourned to 6th September 2024 for consideration on merits.

30 Certified copy expedited.

(JITENDRA JAIN, J.)

(K.R. SHRIRAM, J.)

Gauri Gaekwad