

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 17214 of 2011****For Approval and Signature:****HONOURABLE THE ACTING CHIEF JUSTICE MR.BHASKAR BHATTACHARYA****HONOURABLE MR.JUSTICE J.B.PARDIWALA**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
?

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VENUS JEWEL - Petitioner(s)
Versus

COMMISSIONER OF SERVICE TAX-I MUMBAI & 1 - Respondent(s)

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Appearance :

MR MANISH J SHAH for Petitioner(s) : 1,
MR.VARUN K.PATEL for Respondent(s) : 1 - 2.

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HONOURABLE THE ACTING CHIEF JUSTICE
CORAM :
MR.BHASKAR BHATTACHARYA

and

HONOURABLE MR.JUSTICE J.B.PARDIWALA

Date : 09/05/2012

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.B.PARDIWALA)

1. By way of this writ application under Articles 226 of the Constitution of India, the petitioner a partnership concern, engaged in the business of manufacturing and sale of cut and polished diamonds seeks to challenge the legality, validity and propriety of show-cause notice No.11/Commr./2011-12 issued by Commissioner, Service Tax-I, Mumbai, and thereby calling upon the petitioner to show cause as to why total Service tax of Rs.4,10,47,026/- (including service tax Rs.3,98,87,631/-, Education Cess of Rs.7,97,752/- and Higher Secondary Education Cess of Rs.3,61,643/-) should not be recovered under the proviso to Section 73 Clause 1 of the Finance Act, 1994 read with Section 68 and Section 66A of the Finance Act, 1994 read with Rule 3(iii) of the Taxation of Services (provided from Outside India and received in India) Rules, 2006 alongwith interest under Section 75 of the Act and penalty under Section 76, 77 and 78 of the Act.

2. Facts shortly stated be thus:

2.1 The petitioner is a partnership concern engaged in the business of manufacturing and sale of cut and polished diamonds. As per the case set up by the petitioner the rough diamonds are imported at Surat and are thereafter processed to produce polished

diamonds in the production unit at Surat.

2.2 The department received information through their intelligence that the petitioner was remitting foreign currency to companies based outside India, for the service rendered by such foreign companies in the course of purchase of rough diamonds. Information also revealed that the petitioner was not paying service tax on such services received by them from outside India as is necessary under the provisions of Section 66A of the Finance Act, 1994.

2.3 On being called for, the petitioner submitted details of commission paid to M/s. Goldie International Ltd., London, U.K. in respect of purchase of the rough diamonds for the period from 2006-07 to 2010-11 vide letters dated 26.11.2007, 28.10.2008, 21.11.2008, 18.05.2009 and 07.06.2011. Petitioner vide letter dated 07.06.2011 also furnished details of value Added Service (VAS) paid to M/s. DTC.

2.4 On completion of the investigation, the department reached to the conclusion as under:

(A) The petitioner without obtaining service tax registration, have received 'Business Auxiliary Services' provided by M/s. Goldie International Ltd and have paid them consideration in foreign currency, as commission for their services, which is taxable with effect from 18.04.2006 on reverse basis in terms of Section 66A of the Finance Act, 1994 read with Rule 3(iii) of the Taxation of

Services (provided from Outside India and received in India) Rules, 2006,

(B) The petitioner without obtaining service tax registration received 'Business Support Services' provided by DTC and paid them consideration in foreign currency, as 'Professional fees' towards the Value Added Services (VAS) provided by M/s. DTC, which is taxable with effect from 01.05.2006 on reverse basis in terms of Section 66A of the Finance Act, 1994 read with Rule 3(iii) of the Taxation of Services (provided from Outside India and received in India) Rules, 2006,

(C) The petitioner failed to declare the receipt of these taxable services to the jurisdictional officer and suppressed the correct nature of taxable services received by them with the intention to evade payment of Service Tax on the value of such taxable services,

(D) The petitioner failed to pay Service Tax of Rs.1,47,29,070.00 Edu.Cess of Rs.2,94,581.00 and Higher Secondary Edu.Cess of Rs.1,33,469.00 as detailed in Annexure A1 to this notice, on the 'Business Auxiliary Services' received by them from M/s. Goldie International Ltd. during the period from 18.04.2006 to 31.03.2011,

(E) The petitioner failed to pay Service Tax of Rs.2,51,58,561.00, Edu.cess of Rs.5,03,171.00 and Higher Secondary Edu.cess of Rs.2,28,174.00 as

detailed in Annexure A2 to this notice, on the 'Business Support Services' received by them from M/s. DTC during the period from 01.05.2006 to 31.03.2011.

2.5 Department also reached at the conclusion that the petitioner have contravened the provisions of the Finance Act, 1994 and the rules made thereunder for the reasons enumerated below:

(I) failed to make an application to the jurisdictional officer for registration within the period prescribed as required under Section 69 of the Act and Rule 4 of the Rules;

(II) failed to file proper periodical returns on the due dates as prescribed under Section 70 of the Act and Rule 7 of the Rules, *ibid*;

(III) failed to pay Service Tax within the prescribed time in contravention of Section 68 of the Act and the Rule 6 of the Rules, *ibid*;

(IV) deliberately suppressed the correct nature and value of services received from overseas commission agent with intent to evade Service Tax and the extended period of five years as provided under proviso to sub-section (1) of the section 73 of the Act appears to be invokable for demanding the Service Tax not paid by them.

2.6 Accordingly, department thought fit to issue

show-cause notice at the head office of the petitioner concerned situated at 901-902, Panchratna, Opera House, Mumbai and called upon the petitioner concerned to show cause to the Commissioner, Service Tax-I, Mumbai at New Central Excise Building, 5th Floor, 115, Maharshi Karve Road, Opp. Churchgate Station, Mumbai as to why:

(i) The total Service Tax of Rs.4,10,47,026/- (including service tax Rs.3,98,87,631/-, Edu.Cess of Rs.7,97,752/- and Higher Sec. Edu.Cess of Rs.3,61,643/-) as detailed in summary to Annexure A2 to this Notice should not be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994, read with Section 68 and Section 66A of the Finance Act of the Finance Act 1994 read with Rule 3(iii) of the Taxation of Services (provided from Outside India and received in India) Rules, 2006;

(ii) interest should not be demanded and recovered from them at the appropriate rates under Section 75 of the Act;

(iii) penalty should not be imposed on them under Section 77 of the Act for failure to take registration as required under Section 69 of the Act read with Rule 4 of the Rules and failure to file returns within the prescribed period under Section 70 of the Act and Rule 7 of the Rules;

(v) penalty should not be imposed on them under

Section 78 of the Act as they have suppressed the value of taxable services with the intent to evade payment of Service Tax.

3. It is at that stage that the petitioner though fit to prefer this petition challenging the legality, validity and propriety of the show-cause notice dated 21.09.2011 with the following prayers:

“12.(A) This Hon'ble Court be pleased to call the records of the proceedings, look into them and be pleased to issue writ of certiorari or any other appropriate writ, order or direction quashing the notice at Exh.A.

(B) This Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction asking the Respondent No.1 or his Officers not to proceed further with the said notice at Exh.A.

(C) Pending the hearing and final disposal of this application, this Hon'ble Court be pleased to ask the Respondents not to take any other or further proceedings in pursuance of the notice at Exh.A.

(D) This Hon'ble Court be pleased to grant any further or other relief as this Hon'ble Court deems just and proper in the facts of the case, and

(E) This Hon'ble Court be pleased to allow this application with costs.”

4. Notice was issued to the respondents and in response to the notice issued, the respondents have appeared and have opposed this petition by filing affidavit-in-reply.

5. Mr. Varun K. Patel, learned advocate appearing for the respondents has raised a preliminary contention as regards the territorial jurisdiction of this High Court to adjudicate this petition. According

to Mr. Varun Patel, learned advocate for the respondents, show-cause notice which is the subject matter of challenge has been issued by Commissioner, Service Tax-I, Mumbai and the same was received by the petitioner at his office situated at 901-902, Panchratna, Opera House, Mumbai. According to Mr. Patel, therefore, this Court would have no jurisdiction to entertain this petition due to lack of territorial jurisdiction. This is the first contention which has been taken in the affidavit filed by the Commissioner, Service Tax-I, Mumbai.

6. As preliminary contention has been raised by the respondents as regards lack of territorial jurisdiction of this High Court to entertain the present petition is concerned, we called upon learned counsel Mr. J. P. Shah to address us on this issue before going into the merits of the main issue raised by the petitioner in this petition.

I) Contentions of the petitioner on the preliminary objection of territorial jurisdiction as raised by the respondents:

7. Mr. J. P. Shah, learned counsel appearing for the petitioner submitted that there is no substance worth the name in the preliminary objection raised by the department, as regards lack of territorial jurisdiction of this High Court to entertain this petition. Mr. Shah invited our attention to Article 226 Clause 2 of the Constitution of India which speaks of the territorial jurisdiction of the High Court.

Article 226 Clause 2 of the Constitution of India reads as under:

“The power conferred by clause (1) issue directions, orders or writ 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.”

8. Relying on Article 226 Clause 2 of the Constitution of India, Mr. Shah, learned Counsel vehemently submitted that the High Court can exercise the jurisdiction in relation to the territories within which the cause of action, wholly or in part arises. Mr. Shah, further submitted that it is settled law that 'Cause of Action' consists of bundle of facts which gives cause to invoke legal jurisdiction for redress in Court of Law. It is Contended by Mr. Shah that as a matter of fact, the entire cause of action can be said to have arisen within territorial limits of this High Court, as the diamonds which are imported are received directly at Surat and also processed in the production unit at Surat. According to Mr. Shah, the petitioner has processing unit only at Surat. Mr. Shah further submitted that the diamonds which are imported are not received at Mumbai office of the petitioner, nor does it do any processing work at Mumbai office and therefore, the show-cause notice, which has been issued by the Commissioner of Service Tax-I, Mumbai is apparently invalid and without jurisdiction.

9. Mr. Shah, therefore, submitted that it

cannot be said that no part of cause of action can be said to have occurred within the territorial jurisdiction of this High Court. Mr. Shah also contended that it is the Surat Branch of the petitioner which will be liable to pay service tax, if at all, and only the Commissioner at Surat possess requisite jurisdiction to issue such notice and not the Commissioner at Mumbai. According to Mr. Shah the Commissioner, Mumbai has issued notice to all importers irrespective of the fact whether the importer is importing rough diamonds at Mumbai or Surat, possibly under the misconception or on the assumption that all importers are stationed at Mumbai and goods are received by them at Mumbai. According to Mr. Shah, in view of the above fact, the territorial charge of petitioner for service tax would be in Surat and the Commissioner of Service Tax at Surat is also made a party to this petition as Respondent No.2.

10. Mr. Shah in support of his contention has relied on the decisions of the Supreme Court in the Case of ***Rajendran Chingaravelu V. R. K. Mishra, Additional Commissioner of Income Tax and others***, reported in ***(2010) 1 SCC 457*** and in the case of ***Navinchandra N. Majithia V. State of Maharashtra***, reported in **2000 SC 2966**.

II) Contentions of Respondent No.1 on the issue of lack of territorial jurisdiction:

11. Mr. Varun K. Patel, learned advocate appearing for Respondent No.1 vehemently submitted

that the petition challenging the legality, validity and propriety of the show-cause notice deserves to be rejected only on the ground of lack of territorial jurisdiction apart from the other grounds like being pre-mature and involving highly disputed questions of fact.

12. Mr. Patel submitted that the registered Corporate Office of the petitioner is at Mumbai which is within the jurisdiction of Mumbai, Service Tax Commissioner. According to Mr. Patel, the petitioner had responded to various queries raised by the Mumbai, Service Tax Commissionerate during the investigation and the issue of jurisdiction of Mumbai Commissionerate had never been raised at any point of time.

13. Mr. Patel, further submits that as per the provisions of Service Tax Law, a person can take registration including for the registered office, which in present case is at Mumbai. The petitioner holds PAN No.AAAFV0888R on the registered address at 902, Panchratna, Opera House, Mumbai.

14. Mr. Patel submits that even if it is assumed without accepting that the rough diamonds imported may have been received at Surat, then also record indicates that payments for the services received from M/s. Goldie International and M/s. DTC by the petitioner was made from Mumbai.

15. Mr. Patel further submitted that statement

made by the petitioner in para 11 of the petition to the fact that they have not filed any other application either in this High Court or any other Court including the Supreme Court of India in respect of subject matter of this petition is false. According to Mr. Patel information reveals that Writ Petition No.2482 of 2006 has been filed by M/s. Rosy Blue India Pvt. Ltd. and 41 others before the High Court of Bombay challenging constitutional validity of levy of Service Tax under Section 66A of the Finance Act, 1994 alongwith other related issues and the present petitioner is one of the petitioners in the aforesaid Writ Petition before the Bombay High Court. According to Mr. Patel, the petitioners in the said Writ Petition have challenged the validity of Section 66A alongwith related issues, some of which are identical to the grounds of the present petition. The said Writ Petition has been admitted by the High Court of Bombay and the same is pending for hearing. According to Mr. Patel, this is one of the circumstances which goes to show that it is the Mumbai Service Tax Commissionerate which has jurisdiction to issue the impugned show-cause notice. Lastly, Mr. Patel on the point of territorial jurisdiction submitted that the issue whether the petitioner had received the rough diamonds directly at Surat or not is a question of fact. Similarly, the issue whether any part of cause of action has arisen at Mumbai or not is also a question of fact. Therefore, the said issue can be decided only after the evidence is led and the entire controversy is adjudicated by the Competent Authority. According to Mr. Patel, even if it is assumed without admitting

that the petitioner has received rough diamonds directly at Surat then also the said fact is not the conclusive factor for deciding a question of jurisdiction.

16. In support of his contention, Mr. Patel relied upon the following judgments of the Supreme Court:

1. Union of India v. Adani Exports Ltd., reported in 2001 (134) E.L.T. 596 (S.C.)
2. Kusum Ingots & Alloys Ltd. V. Union of India, reported in (2004) 6 SCC 254
3. National Taxtile Corporation Ltd. and Others., V. Haribox Swalram and Others, reported in (2004) 9 SCC 786
4. Mosaraf Hossain Khan v. Bhagheeratha Eng. Ltd. and ors., reported in (2006) 3 SCC 658.

17. Having heard learned Counsel for the respective parties and having gone through the material on record, we are of the view that the only question for our consideration in this petition is as to whether any part of cause of action can be said to have arisen within the territorial jurisdiction of this High Court, so as to make the present petition maintainable challenging the show-cause notice issued by Commissioner of Service Tax-I, Mumbai.

18. Jurisdiction may be defined to be the power or authority of a Court to hear and determine a cause, to adjudicate and exercise any judicial power in relation to it. In other words, by jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for

its decisions. Jurisdiction of a court may be classified into various categories; (i) territorial jurisdiction; (ii) pecuniary jurisdiction; (iii) jurisdiction as to subject matter etc. Every court has its own local or territorial limits beyond which it cannot exercise its jurisdiction. In the present case, we are concerned with the territorial jurisdiction of this High Court to grant reliefs as prayed for by the petitioner in this petition.

19. Territorial jurisdiction of the High Courts has been defined and dealt with in Article 226 of the Constitution of India. By the Constitution (Fifteenth Amendment) Act, 1963, after clause (1), new clause (1-A), [renumbered as Clause (2) by the Constitution (Forty second Amendment) Act, 1976] was added; which reads as under:

“(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.”

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(emphasis supplied)

The underlying object of the amendment was expressed in the following words:

“Under the existing Article 226 of the Constitution, the only High Court which has jurisdiction with respect to the Central Government is the Punjab High Court. This involves considerable hardship to litigants from distant places. It is, therefore, proposed to amend Article 226. So that when any relief is sought against any Government, authority or person for any action taken, the High Court within whose jurisdiction the cause of action arises may also have jurisdiction to issue appropriate

directions, orders or writs.”

Effect of Amendment:

The effect of amendment is that it made the accrual of cause of action an additional ground to confer jurisdiction to a High Court under Article 226. As Joint Committee observed:

“This clause would enable the High Court within whose jurisdiction the cause of action arises to issue directions, orders or writs to any Government, authority or person, notwithstanding that the seat of such Government or authority or the residence of such person is outside the territorial jurisdiction of the High Court. The Committee feel that the High Court within whose jurisdiction the cause of action arises in part only should also be vested with such jurisdiction.”

Thus after the insertion of Clause (1-A), the legal position is that a writ can be issued by a High Court against a person, Government or authority residing within the jurisdiction of that High Court, or within whose jurisdiction the cause of action in whole or in part arises.

Cause of action:

After the insertion of clause (1-A), renumbered as (2), now the jurisdiction of a High Court can be invoked if the cause of action arises, wholly or in part, within the territorial jurisdiction of that High Court. However, the expression “cause of action” has neither been defined in the Constitution nor in the Code of Procedure, 1908. But it may be described as “a bundle of essential facts, which is necessary for the plaintiff to prove before he can succeed.” or if

not proved would give the defendant a right to judgment in his favour. It gives occasion for and forms the foundation of the suit.

The classic definition of the expression "cause of action" is found in the case of **Cooke V. Gill** (42 LJPC 98), wherein Lord Brett observed:

"Cause of action" means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court."

20. In **ABC Laminart Pvt. Ltd. V. A. P. Agencies**, reported in 1989 (2) SCC 163, the Supreme Court observed:

"A 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. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not compromise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief for by the plaintiff."

Test:

Whether any particular facts constitute a cause of action or not has to be determined with reference to the facts of each case taking into consideration

the substance of the matter rather than the form of action. Again, it must be antecedent to the institution of the petition and the basis on which the petition must have been filed. Finally, before a petition can be entertained by the High Court, the petitioner has to show that one of the essential facts has arisen within the territorial jurisdiction of the High Court.

Wholly or in part arises

Clause (2) of Article 226 enables a High Court to issue appropriate writs, orders or directions within the local limits of whose jurisdiction the cause of action, "wholly or in part" arises.

It is, therefore, incumbent on the court to examine whether the cause of action wholly or partly has arisen within the local limits of its jurisdiction. If it has arisen, the High Court has jurisdiction to entertain a petition. But if it has not, the High Court cannot entertain such petition.

The expression "in part" is comprehensive and takes within its sweep even an infinitesimal fraction of cause of action.

Basis: Averments in petition

The expression "wholly or in part" in Article 226(2) refers entirely to the facts stated and grounds set forth in the petition as the cause of action and has nothing to do with the defence set up or objection

raised by the opposite party.

Before more than a century, in Chand Kaur V. Partab Singh speaking for the Judicial Committee of the Privy Council, Lord Watson stated:

“(T)he cause of action has no relation whatever to the defence which may be set up by the defendant, not does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or in other words, to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour.”

III) Leading case laws on the subject:

21. In the case of ***Union of India Vs. Adani Exports Ltd.***, (*supra*) the Supreme Court criticised the manner in which the certain facts which had no bearing with the lis or dispute involved in the case were sought to be highlighted and relied upon with the sole object to conferring territorial jurisdiction on the High Court of Gujarat. This judgment of the High Court has been very heavily relied upon by the learned counsel Mr. V. K. Patel appearing for the respondents in support of his contention that this Court has no territorial jurisdiction to entertain this petition. In the case of Adani Exports Ltd. (*supra*) the following facts were pressed into service to give rise to the cause of action conferring territorial jurisdiction on the High Court of Gujarat at Ahmedabad, they are:

“(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 at 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 utilisation of the credit in the pass-book will affect the business of the respondents at Ahmedabad;

(vi) respondents have executed a bank guarantee through their bankers at Ahmedabad as well as a Bond at Ahmedabad.”

22. After considering the facts as enumerated above, Supreme Court held in Para 17 as under:

“17. 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 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 nexus or relevance with the lies or the dispute 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 principal then we see that none of the facts pleaded in Para 16 of the petition, in our opinion, fall 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.”

23. The Court further proceeded to observe in para 19 as under:

“19. In the case of ONGC (supra), this Court negated the contentions advanced on behalf of the respondents therein that either 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.”

24. Supreme Court thereafter, proceeded further to consider the decision in the case of **Navinchandra V. State of Maharashtra** (*supra*) which has been relied upon by learned counsel for the petitioner. Supreme Court in para 20 explaining the ratio laid down in the Navinchandra v. State of Maharashtra and why it would not help Adani Exports Ltd., who had succeeded before the High Court:

“20. Mr. Desai, however, placed reliance on a recent judgment of this Court in Navinchandra v. State of Maharashtra (*supra*) wherein this Court had held that a part of the cause of action had arisen within the jurisdiction of the Bombay High Court. It is to be noted that in the said petition, among other reliefs, the writ petitioner had prayed for a writ of mandamus to the State of Meghalaya to transfer the investigation to Mumbai Police as also allegations of mala fides were made as to the filing of the complaint at Shillong. It was also averred in that case that the petitioner was primarily aggrieved by the criminal complaint filed at Meghalaya because the bulk of the investigation was carried on at Bombay. The said writ petition was dismissed by the Bombay High Court solely on the ground that since the complaint in question was filed in Shillong in the State of Meghalaya and the petitioner had sought for quashing of the said complaint, such a writ petition was not maintainable before the High Court of Bombay. According to this Court, that finding was given without taking into consideration the other alternative prayers in the writ petition to which we have made reference hereinabove, which prayers according to this Court, gave rise to a cause of action to move the High Court at Bombay for relief. Therefore, in our opinion, this judgment does not help the writ petitioner to justify its action in filing a writ petition before the Gujarat High Court. That apart, we must notice that the said judgment is delivered in a matter involving criminal dispute and consequences of such dispute have a direct bearing on the personal freedom of a citizen guaranteed under Article 21 of the

Constitution. Therefore, the consideration that arises in deciding the question of territorial jurisdiction in cases involving criminal offences may not always apply to cases involving civil disputes like the special civil applications with which we are concerned. Mr. Desai then urged that since the High Court has elaborately dealt with the merits of the case and given a finding in favour of the respondents in the interest of justice, we should not interfere with the said finding and uphold the same. We are not inclined to accept this argument of the learned counsel because the appellants herein had taken objection to the entertainment of the special civil applications by the Gujarat High Court on the ground of lack of territorial jurisdiction in the first instance itself and the same was rejected, according to us, wholly on unsustainable grounds. As a matter of fact, the appellant on the entertainment of the civil application and grant of interim order, had challenged the said order on the ground of want of jurisdiction by way of a civil appeal in this Court which appeal is pending consideration by this Court, therefore, the objection having been taken at the first instance itself and the court having not proceeded to decide this question of territorial jurisdiction as contemplated under Order XIV Rule 2 CPC, we think we cannot deny relief to the appellant solely on the ground that the High Court has chosen to proceed to decide the case on merit. This being a judgment of a court having no territorial jurisdiction, the judgment has to be set aside. However, the special civil applications cannot be dismissed on this ground because it has been the contention of the appellants themselves in the objections filed by them before the High Court, that these applications ought to be transferred to the High Court at Chennai, in the interest of justice, we agree with this plea.”

25. In the case of **Madhya Pradesh State Electricity Board v. Shree Bharat Co-operative Bank Ltd.**, reported in 2009 (2) GLH 750, Division Bench of this High Court had the occasion to consider the issue of territorial jurisdiction. The Division Bench held in para 10 of the said judgment as under after taking into consideration, **Navinchandra v. State of Maharashtra** (*supra*) and other judgments of the Supreme Court:

“10.The mere fact that the petitioner had submitted an application and paid the money through SBI Capital Markets

Ltd., having its office in the State of Gujarat will not confer jurisdiction on Gujarat High Court to entertain the petition raising the claim against the MPEB and State of Madhya Pradesh. Offer was made by the petitioner-bank which was accepted by the MPEB at their Head Office at Jabalpur, State of Madhya Pradesh. The allotment was made by the MPEB from its Head Office situated at Jabalpur. Letter of allotment was issued from Jabalpur by Registered Post to the petitioner. Bond certificates were issued by the Madhya Pradesh Electricity Board from Jabalpur. Contract was, therefore, concluded at Jabalpur and the major portion of the cause of action arose at Jabalpur. The material, essential or integral part of the cause of action arose in the State of Madhya Pradesh and not in State of Gujarat. This legal position is well settled. Reference may be made to the decision of the Apex Court in *Navinchandra N. Majithia v. State of Maharashtra*, 2000 SC 2966, *Kusum Ingots & Alloys Ltd. v. Union of India*, (2004) 6 SCC 254 and *Alchemist Limited v. State Bank of Sikkim*, AIR 2007 SC 1812. Apex Court has examined the scope of clause (2) of Article 226 of the Constitution of India and held that even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court may have jurisdiction in the matter, but the question one has to consider is whether such fact constitutes the material, essential or integral part of the cause of action. In *Kusum Ingots' case (Supra)*, Apex Court held that even if a small portion of the cause of action arises within the territorial jurisdiction of the Court, the same by itself be not considered to be 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. Above mentioned decision has been followed by the Division Bench of High Court of Kerala where one of us (Mr. Justice K.S. Radhakrishnan, CJ) was a member, in the case of *Capt. B.S. Prakash v. Food Corporation of India and others*, ILR 2007 (4) Kerala 73. “

26. In the case of ***National Textile Corporation Ltd.*** (*supra*) the textile mills were situated in Bombay and the supply of cloth was to be made by them ex-factory at Bombay. It was contended by the writ petitioner that money was paid to the mills at Bombay. The learned Single Judge after a detailed discussion of the matter held that the Calcutta High Court had no jurisdiction to entertain the writ petition. The Division Bench reversed this finding on the ground

that the concluded contract had come into existence which could be cancelled only after giving an opportunity of hearing and consequently the question of revocation of the contract at its Calcutta address would constitute a cause of action. Supreme Court in the facts of the case held that the view taken by the Division Bench was wholly erroneous in law. Supreme Court held that 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 taken by the Division Bench could not be sustained. More observations of the Supreme Court are in para 10 of the judgment wherein Supreme Court held as under:

“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 those territories. Cause of action as understood in the civil proceedings 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. To put it in a different way, it is bundle of facts which taken with law applicable to them, gives the plaintiff a right to relief against the defendant. In *Union of India v. Adani Exports Ltd.* AIR 2002 SC 126 in the context of clause (2) of Article 226 of the Constitution, it has been explained 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. Facts which have no bearing with the lis or dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the Court concerned.”

26. In the case of ***Kusum Ingots & Alloys Ltd.*** (*supra*) Supreme Court has very succinctly explained as to what is 'cause of action' and the term 'wholly or in part'. The following observations are relevant for our purpose:

“Cause of Action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitute the cause or action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily. The entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts. All necessary facts must form an integral part of the cause of action.

The question as to whether the Court has a territorial jurisdiction to entertain a writ petition, must be arrived at on the basis of averments made in the petition, the truth or otherwise thereof being immaterial.

In order to confer jurisdiction a High Court to entertain a writ petition it must disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the Court to decide the dispute and that the entire or a part of it arose within its jurisdiction. The facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the Court.

Keeping in view the expressions used in Article 226(2) of the Constitution 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 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.”

27. In light of the aforesaid authoritative pronouncements and the principles of law as explained by the Supreme Court, we shall now proceed to consider as to whether the petitioner has made out any case so as to make the present petition maintainable within the territorial jurisdiction of this High Court.

28. What can be culled out from various pronouncements of the Supreme Court is that one of the most important considerations so far as the aspect of territorial jurisdiction is concerned, is to ascertain, as to whether the facts pleaded have any bearing with the lis or the dispute involved in the case. In the present case, what we find is that the registered office of the petitioner is at Mumbai, and the show-cause notice was also received at the Mumbai office. All queries were answered before the Commissioner of Service Tax at Mumbai. Levy of Service Tax under Section 66A of the Finance Act, 1994 has also been challenged in the High Court of Bombay. Thus, according to us, no part of cause of action can be said to have arisen within the territorial jurisdiction of this High Court. It is difficult for us to accept the submission of Mr. Shah that diamonds were received at Surat after being imported for which the petitioner is being proceeded, and therefore, a part of cause of action can be said to have been arisen within the territorial jurisdiction of this

High Court. We are of the view that the fact that diamonds were received at Surat, even if believed to be true is not such a fact which by itself would confer territorial jurisdiction on this Court. We are of the view that this fact has no direct nexus or relevance so far as the main issues which are involved in the petition. It is no doubt true that in determining objection of lack of territorial jurisdiction the Court must take all the facts pleaded in support of cause of action into consideration albeit when making upon the inquiry as to the correctness or otherwise of the said facts. In other words, the question whether the High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise thereof being immaterial.

29. In our view, whether the diamonds imported were received at Mumbai or Surat by itself would not be conclusive factor for determining territorial jurisdiction of the High Court. Because by merely receiving consignment at a particular place by itself will not confer jurisdiction to the Court of that place where the consignment is received. This is not such a factor or circumstance which by itself will confer jurisdiction to the Court.

30. We shall now look into the judgment relied upon by learned counsel Mr. Shah in support of his contention. Mr. Shah very heavily relied upon the

decision of the Supreme Court in the case of **Rajendran Chingaravelu** (supra). In **Rajendran Chingaravelu** (supra) the appellant travelled by air from Hyderabad to Chennai on 15.06.2007, carrying cash of Rs.65 lac alongwith bank certificate certifying the source and withdrawals. At the time when he boarded the flight from Hyderabad airport the security personnel allowed Rajendran Chingaravelu to board the aircraft without any objection. But as the flight landed at Chennai, few police officers who were later identified as officers of the Income Tax Investigation Wing intercepted Rajendran. He was questioned at the Chennai airport about the money he was carrying. He explained to the officials that the cash was withdrawn from the bank for which certificate has also been issued by the Bank. However, it appears that he was detained for about 15 hours without any justifiable reason. Rs.65 lac were seized after giving him receipt. On the next day leading Tamil newspapers flashed this incident. Aggrieved by this action of the officers at the Chennai airport he filed a writ petition at the High Court of Andhra Pradesh praying that action be taken against the Income Tax Officers and the newspapers. He also sought compensation for the illegal acts, and quashing of the proceedings initiated against him under the Income Tax Act, 1961. The said writ petition was dismissed by the High Court of Andhra Pradesh on 17.06.2008 on the ground that no part of the cause of action arose within Andhra Pradesh. Aggrieved by the judgment of the Andhra Pradesh High Court Rajendran preferred SLP before the Supreme Court. Supreme Court took up the first

question for consideration as to whether the Andhra Pradesh High Court was justified in holding that as the seizure took place at Chennai(Tamil Nadu), Rajendran could maintain the writ petition before the High Court at Chennai and not at the High Court of Andhra Pradesh. In the factual background Supreme Court held that considering the genesis for the entire episode of search, seizure and detention was the action of the security/intelligence official at Hyderabad Airport(in Andhra Pradesh) who having inspected the cash carried by Rajendran, alerted their counterparts at Chennai Airport that Rejendran was carrying a huge sum of money and required to be intercepted and questioned. Supreme Court held that a part of cause of action clearly arose in Hyderabad. Not only this, the Supreme Court also noticed that the consequential income tax proceedings against Rajendran which he challenged in the writ petition were also initiated at Hyderabad. In this background of facts the Supreme Court held that the High Court of Andhra Pradesh ought not to have rejected the petition on the ground of want of jurisdiction. There cannot be any quarrel with the proposition of the law as explained and laid down by the Supreme Court but the same in our view would not help Mr. Shah for the simple reason that on the facts of the present case we are convinced that no part of cause of action can be said to have been arisen within State of Gujarat so as to make this petition maintainable before this High Court.

31. Viewed from the angle, the expression 'cause of action' means the bundle of facts which the

petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. Every fact, which, if traversed, would be necessary for the petitioner to prove in order to support his right to a judgment of the Court. It is a bundle of facts which taken with the law applicable to them gives the petitioner a right to relief against the respondents. In legal parlance the expression 'cause of action' is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a Court or a tribunal; a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in the court from another person. 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 which the Court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis or dispute involved in the case. The 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. The territorial jurisdiction must be decided on the facts pleaded in the petition, the truth or otherwise of the averment made in the petition being immaterial. To confer jurisdiction on a Court even if a part of the cause of action arises within its jurisdiction, it is sufficient. It is purely a question of fact.

32. In so far as the application of Clause (2) of Article 226 is concerned, the petitioner has to

establish that cause of action wholly or in part arises within the jurisdiction of this Court. In order to find out the cause of action it is necessary to have a look at the entire averments in the Writ Petition. As already said it is not every averment in the Writ Petition which give rise to a cause of action. Averments in the Writ Petition must have a nexus with the act complained of and it is only those facts which give rise to a cause of action and which have a nexus or relevance to the lis or the dispute involved in the case which has been taken note of.

33. For the reasons stated aforesaid, we have no hesitation in coming to the conclusion that the preliminary objection as raised by the respondents as regard territorial jurisdiction of this High Court deserves to be sustained. This petition must fail solely on the ground that this Court lacks territorial jurisdiction to adjudicate the legality, validity and propriety of the show-cause notice issued by Commissioner, Service Tax-I, Mumbai. It will be open for the petitioner to challenge the show-cause notice before the Court of competent jurisdiction. We may clarify that we have otherwise not gone into the merits of the larger issues which has been raised in this petition. The petition is, therefore, rejected. However, in the facts and circumstances of the case there shall be no order as to costs.

(BHASKAR BHATTACHARYA, ACTING CJ.)

(J. B. PARDIWALA, J.)

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