* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 04.03.2025
Judgment delivered on: 07.03.2025

\+ W.P.(C) 2557/2025 & CM APPLs.12089-12090/2025

RAIN CII CARBON VIZAG LTD & ANR. ...Petitioners

versus

UNION OF INDIA THROUGH THE SECRETARY DEPARTMENT OF COMMERCE & ORS. ...Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. P. Chidambaram, Senior Advocate with Mr. Syed Jafar Alam, Ms. Ankita Amarnath Kamath and Mr. Shivraj Berry, Advocates.

For the Respondents : Ms. Rukhmini Bobde, CGSC with Mr. Hussain Taqui, G.P., Mr. Amlaan Kumar and Mr. Vinayak Arun, Advocates for UOI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. Present writ petition has been filed under Article 226 of the Constitution of India, 1950 seeking, *inter alia,* the following prayers:-

> *"i) Quash the Rejection Letter dated 05.02.2025 bearing File No. 09AX04000927AM25 and Deficiency Letter dated 15.01.2025 bearing File No. 09AX04000927AM25 issued by the Respondent No. 3/ Additional Director General of Foreign Trade;*
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> *ii) Issue a writ, order or other direction to the Respondents to grant Advance Authorisation to the Petitioners against their Application*

for Grant of Advance Authorisation dated 31.12.2024 bearing File No. 09AX04000927AM25;

iii) Issue a writ, order or other direction to the Respondents that raw pet coke (RPC) imports by the Petitioners for supply of calcined pet coke (CPC) to SEZ units in India are entitled to the grant of Advance Authorisation under the Foreign Trade Policy, 2023;

iv) Issue a writ, order or other direction to the Respondents that the Petitioners are permitted to supply CPC to SEZ units in India by the order dated 15.02.2024 issued by the Commission for Air Quality Management in National Capital Region and Adjoining Areas read with the Hon'ble Supreme Court's order dated 10.10.2023 in W.P. (C) No. 13029/1985 M.C. Mehta v. Union of India;

v) In the alternative and without prejudice to the above prayers, issue a writ, order or direction quashing the DGFT Notification No.68/2023 dated 07.03.2024, if and insofar as it purports to prohibit the supply of CPC by domestic calciners to SEZ units;

vi) Pending the captioned Petition, stay the Rejection Letter dated 05.02.2025;

vii) Pending the captioned Petition, permit the Petitioners to continue to supply CPC to SEZ units;

viii) Pending the final hearing and disposal of the present Writ Petition, permit the Petitioners to import requisite quantities of RPC and direct the Respondents to further issue necessary directions to the relevant authorities to treat the shipments received thereunder as exempt from any and all import duties as if covered by an Advance Authorisation;"

2. Briefly, the case of the petitioner is that by virtue of the order dated 09.10.2018, the Hon'ble Supreme Court permitted the import of 1.4 MMT of Raw Petroleum Coke (hereafter referred to as *"RPC"*) per annum in the Public Interest Litigation bearing W.P.(C) No. 13029/1985 captioned *M.C. Mehta vs. Union of India*. It is informed that the Foreign Trade Policy, 2023 (hereafter referred to as *"FTP"*) was issued by the Central Government

through the Directorate General of Foreign Trade (hereafter referred to as *"the DGFT"*) under Section 5 of the Foreign Trade (Development & Regulations) Act, 1992 (hereafter referred to as *"FT Act"*). Chapter 4 of FTP refers to Advance Authorisation which is issued to allow duty free import of input, which is physically incorporated in export product including export to Special Economic Zone Units (hereafter referred to as *"SEZ Units"*). Chapter 7 relates to *"Deemed Exports"* which are goods that are entitled to Advance Authorisation as deemed exports.

3. The Hon'ble Supreme Court *vide* order dated 10.10.2023 directed the Commission for Air Quality Management (hereafter referred to as *"CAQM"*) in the National Capital Region to take a fresh look into all issues pertaining to petroleum coke after considering the inputs of persons and entities like the petitioner. It is stated that the CAQM *vide* its order dated 15.02.2024 directed that *"Deemed Exports"* by domestic calciners to SEZ Units is permissible. Pursuant thereto, DGFT amended its Import Policy permitting the import of RPC subject to certain terms and conditions. It is stated that the petitioner had submitted applications for Advance Authorisation on 31.03.2024, 20.04.2024 and 03.08.2024 for export of Calcined Pet Coke (hereafter referred to as *"CPC"*) to Vedanta SEZ Units. The petitioner is aggrieved by the rejection of the fourth application dated 31.12.2024 seeking Advance Authorisation for manufacture and export of CPC to Vedanta SEZ Units. By the letter dated 05.02.2025, the DGFT rejected the application seeking Advance Authorisation ostensibly predicated on the revised policy condition 6(b)(iii) of the DGFT Notification no.68/2023 dated 07.03.2024. The relevant paragraphs of the

same are as under:

> *"1. Exports to SEZ units are covered under physical/direct exports wherein a Bill of Exports is generated, whereas deemed exports are defined in Para 7.01 read with Para 7.02 of FTP 2023, which does not cover exports to SEZ units as deemed exports.*
>
> *2. As per DGFT Notification No. 68/2023 dt. 07.03.02024, the revised policy condition 06(b)(iii) import of RPC by calciners shall be on Actual use basis and shall not be transferred to any other unit(s) including SEZ unit(s). Export of CPC by calciners shall not be permitted."*

Aggrieved by the said rejection, the present writ petition has been preferred by the petitioner seeking prayers as abovementioned.

4. On 28.02.2025, Ms. Bobde, learned counsel appearing for the respondents had raised a preliminary objection as to the maintainability of the present petition on the anvil of lack of territorial jurisdiction of this Court to adjudicate the present petition. On the *prima facie* satisfaction that though there may be a part of cause of action arising within the local limits of its territorial jurisdiction, yet, this Court may not entertain the present petition predicated on the *"Doctrine of Forum Conveniens"*, the Court had directed the parties to address arguments on the said issue.

CONTENTIONS OF THE PETITIONER:-

5. Mr. P. Chidambaram, learned senior counsel appearing for the petitioner at the outset drew our attention to clause (2) of Article 226 of the Constitution of India to submit that there is neither a bar nor a prohibition for the High Court where the seat of authority is located to entertain any writ petition, if even a small part of cause of action has arisen. He emphasizes that in the present case, the prayers as well as the facts as pleaded would clearly establish that a part of cause of action, and in his

submission, material cause of action has arisen in the territory of Delhi. He lays great emphasis on prayers (i), (iii) and (v), and in that order, sought in the writ petition to vociferously contend that the relief sought is intrinsically intertwined with the cause of action arising within the territorial jurisdiction of this Court. In that, the impugned rejection letter dated 05.02.2025; the direction to respondent that RPC imports by the petitioner for supply of CPC to SEZ Units in India are entitled to grant of Advance Authorisation under the FTP and; the DGFT Notification no.68/2023 dated 07.03.2024 to the extent they prohibit supply of CPC by domestic calciners to SEZ Units, have emanated from the office of DGFT located at Delhi.

6. Alluding to the office orders dated 05.02.2024 and 01.07.2024 issued by the Ministry of Commerce and Industry, DGFT, learned senior counsel contends that the officer Shri Rakesh Kumar, Additional DGFT (Hqr.) was not only promoted to the post of Additional DGFT (hereafter referred to as *"ADGFT"*) from the post of Joint DGFT but was also conferred the additional charge of Regional Authority, Hyderabad apart from his existing charge at DGFT (Hqr.). His emphasis appears to be premised on the fact that the said ADGFT was the Competent Authority to grant or reject an application seeking Advance Authorisation for those entities which would fall within the jurisdiction of DGFT Office, Hyderabad. He forcefully contends that though the petitioner has received the previous three authorisation from the Hyderabad office of DGFT, yet, the impugned rejection letter dated 05.02.2025, though has been given a colour of having been issued from the Hyderabad office, was signed by the ADGFT sitting at

Delhi. According to him, it is this act of ADGFT which is the primary and material cause of action which has arisen within the territorial jurisdiction of this Court.

7. According to learned senior counsel, mere service or furnishing of copy of the said rejection letter dated 05.02.2025 upon the petitioner at its Hyderabad office may confer jurisdiction on the jurisdictional High Court at Hyderabad, yet clause (2) of Article 226 of the Constitution of India would enable the petitioner to maintain the writ petition before this Court too. In other words, the act of appending signature of ADGFT at Delhi on the impugned rejection letter coupled with the fact that the order passed by CAQM in compliance whereof the DGFT amended the import policy *vide* its Notification dated 07.03.2024 which was at Delhi, would confer the proper and appropriate territorial jurisdiction upon this Court.

8. He also emphasizes that the Hon'ble Supreme Court had granted permission to the CAQM to formulate guidelines. In support of the said contention, learned senior counsel drew attention of this Court to order dated 10.10.2023, passed by the Hon'ble Supreme Court allowing the petitioner to place its application for consideration before the CAQM. Learned senior counsel also referred to the Notification no.68/2023 dated 07.03.2024 and read the revised policy condition 6(b)(iii) to impress upon this Court as to how the DGFT has materially tweaked the permission granted by CAQM for export to SEZ Units. It is in this context, the learned senior counsel referred to prayer (v) of the present writ petition to contend that the said notification which was issued at Delhi by the DGFT itself is a subject matter of challenge.

9. He also stoutly urges that there would possibly be no prejudice, much less grave prejudice, caused to the respondents in case this Court exercises its jurisdiction over the *lis* inasmuch as clause (2) of Article 226 of the Constitution of India would in any case ordinarily confer the requisite territorial jurisdiction.

10. Mr. Chidambaram, learned senior counsel also relies upon the judgment of the Hon'ble Supreme Court in ***State of Goa vs. Summit Online Trade Solutions Pvt. Ltd. & Ors.; (2023) 7 SCC 791*** particularly para nos.15, 16, 17 to submit that the Apex Court has clarified as to what would constitute a *"material"*, essential to be integral part of cause of action and as to under what circumstances the High Court ought to construe as to whether it has or has not the requisite territorial jurisdiction to adjudicate the dispute. In the opinion of learned senior counsel, the Hon'ble Supreme Court has clearly enunciated that clause (2) of Article 226 of the Constitution of India would involve an exercise by the High Court to examine whether in a particular case, even a part of cause of action could be so intrinsic as to confer territorial jurisdiction on that High Court too. According to him, viewed from that angle, this Court would clearly have the requisite territorial jurisdiction to entertain the present writ petition.

11. Learned senior counsel also contends that the petitioner had on a previous occasion, filed a writ petition before this Court, which was not only entertained, but the respondents never raised any objection in respect of lack of territorial jurisdiction. He submits that given the past record, coupled with the fact that clause (2) of Article 226 of the Constitution of India confers territorial jurisdiction undoubtedly upon this Court, due

weight and credence to the above fact ought to definitely weigh on the mind of this Court before relegating the petitioner to avail his remedy before the High Court of Telangana or High Court of Andhra Pradesh. He thus, urges that the exercise of jurisdiction being concurrent, there is neither any plausible nor probable reason why this Court cannot entertain the present writ petition.

CONTENTIONS OF THE RESPONDENT/UOI:-

12. Opposing the contentions, Ms. Rukhmini Bobde, learned counsel for the respondents vehemently places forth the contention that this Court cannot and should not exercise its writ jurisdiction predicated on the ratio laid down by the Full Bench of this Court in ***Sterling Agro Industries Ltd. vs. Union of India & Ors.; 2011 SCC OnLine Del 3162*** . She vociferously contends that apart from the fact that clause (2) of Article 226 of the Constitution does possibly confer jurisdiction on more than one High Court, but the doctrine of *forum conveniens* also has to be applied to all such cases where there may arise a doubt regarding the territorial jurisdiction of a particular High Court or other High Courts. Moreover, according to her, the ratio laid down in ***Sterling Agro*** *(supra)* is binding upon this Court which necessarily has to be adhered to scrupulously. Learned counsel has taken us through various relevant paragraphs of the said judgement to support her contentions.

13. That apart, learned counsel also relies upon the judgement of the Hon'ble Supreme Court in the case of ***Kusum Ingots & Alloys Ltd. vs. Union of India & Anr.; (2004) 6 SCC 254***, particularly paragraph 30. According to her, ***Kusum Ingots*** *(supra)* is a direct authority for the

proposition of territorial jurisdiction arising in the present petition. She emphatically urges that the Hon'ble Supreme Court in this judgement laid the foundation of examination of doctrine of "*forum conveniens*", particularly in the context of clause (2) of the Article 226 of the Constitution of India. In other words, learned counsel implores that even in a given case where concurrent territorial jurisdiction may be available, it is all the more reason to examine the principle of *forum conveniens*. As per learned counsel, in the present case, all the relevant, material and core issues have arisen at Hyderabad and in fact, no cause of action has at all arisen in Delhi. She emphasises that the petitioner itself is located in Hyderabad; its Unit at Scindia Road, Naval Base Post, Visakhapatnam in the State of Andhra Pradesh; the delivery of CPC to the concerned SEZ Unit is at Jharsaguda, in the State of Orissa etc. and the impugned rejection letter has been issued by the concerned Regional Authority exercising jurisdiction over the concerned geographical area within which petitioner's office is located. She also states that merely because the DGFT is located at Delhi or that the Notification No.68/2023 dated 07.03.2024 was notified from Delhi would not confer proper territorial jurisdiction upon this Court. She prays that the petition be thus dismissed on this score.

ANALYSIS AND CONCLUSION:-

14. We have heard Mr. P Chidambaram, learned senior counsel and Ms. Bobde, learned counsel for the respondents at great length, examined the records of the case for appreciation of facts involved herein and scrutinised the judgements relied upon by the parties.

15. Before adverting to the facts germane to determine whether this

Court has the necessary territorial jurisdiction to entertain the present writ petition, it would be apposite to examine the law laid down by the Hon'ble Supreme Court as well as this Court, both on the provisions of clause (2) of Article 226 of the Constitution of India as well as the doctrine of *forum conveniens*. We are acutely aware that this doctrine has engaged the attention of the Apex Court as well as this Court and are of the opinion that the said doctrine would necessarily have to be applied in cases such as the present one.

16. At the outset, it would also be, in our opinion, relevant to understand that the provisions of clause (2) of Article 226 of the Constitution of India appear to have been engrafted in a language similar or akin to sub section (c) of section 20 of the Code of Civil Procedure, 1908 (hereafter referred to as *"CPC, 1908"*). The framers were acutely aware that apart from the territorial jurisdiction conferred upon a competent Civil Court exercising its powers in accordance with sub section (a) and (b) of section 20, CPC, 1908, it would be necessary to confer jurisdiction to such other places where a *"cause of action" "wholly or in part"* has arisen. The words, *"cause of action"*, for the purpose of clause (2) of Article 226 of the Constitution of India, for all intent and purport, may be ascribed similar meaning and effect as envisaged under sub section (c) of section 20 of the CPC, 1908. Reference in this regard can be made to the decision of the Hon'ble Supreme Court in ***Eastern Coalfields Ltd. & Ors. vs. Kalyan Banerjee; (2008) 3 SCC* 456**. The phraseology used in sub section (c) of section 20 of the CPC, 1908 and clause (2) of Article 226 of the Constitution of India, being *pari materia*, the import and purport of sub section (c) of section 20

of the CPC, 1908 may be made applicable to the writ proceedings also. This appears to be the intention expressed in ***Kusum Ingots*** *(supra)*. What constitutes a *"cause of action"* and whether it has arisen *"wholly or in part"* therefore, has to be necessarily examined by the Court where such an issue emerges after evaluating the necessary and relevant facts arising therein.

17. Though, so far as Constitutional Courts exercising jurisdiction under Article 226 of the Constitution of India are concerned, it is settled that the same is discretionary and has to be necessarily tempered with the doctrine of *forum conveniens*. According to the said doctrine, 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 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 non-conveniens*. Reference in this regard can be made to the decision in ***Kusum Ingots*** *(supra)*. This ratio has consistently been followed by the Hon'ble Supreme Court in various judgements. We may also note, with due deference, that the ratio laid down in ***Kusum Ingots*** *(supra)* would tantamount to *"stare decisis"*. (See: ***State of Goa*** *(supra)*; ***Shanti Devi vs. Union of India & Ors.; (2020) 10 SCC 766***, ***Krishna Veni Nagam vs. Harish Nagam; (2017) 4 SCC 150***.) The relevant paragraph of ***Kusum Ingots*** *(supra)* is reproduced hereinbelow:-

> *"Forum conveniens*
>
> *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. [See Bhagat Singh Bugga v. Dewan Jagbir Sawhney [Bhagat Singh Bugga v. Dewan Jagbir Sawhney, 1941 SCC OnLine Cal 247 : AIR 1941 Cal 670] , Madanlal Jalan v. Madanlal [Madanlal Jalan v. Madanlal, 1945 SCC OnLine Cal 145 : AIR 1949 Cal 495] , Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd. [Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd., 1997 CWN 122] , S.S. Jain & Co. v. Union of India [S.S. Jain & Co. v. Union of India, 1993 SCC OnLine Cal 306 : (1994) 1 CHN 445] and New Horizons Ltd. v. Union of India [New Horizons Ltd. v. Union of India, 1993 SCC OnLine Del 564 : AIR 1994 Del 126] .]"

18. It is pertinent to note that clause (2) of Article 226 of the Constitution of India was inserted by virtue of the Fifteenth Amendment in 1963 as clause (1A). It was however, subsequently renumbered as clause (2) *vide* the Forty Second Constitutional Amendment in the year 1976. This is how it stands even today. The rationale behind such amendment is captured succinctly in the Statement of Objects and Reasons appended to the Fifteenth Amendment Bill, 1962. The same reads thus:

"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 arise may also have jurisdiction to issue appropriate directions, orders or writs."

Further, the then Law Minister while introducing the aforesaid Bill elaborated and emphasised the reason behind introduction of such amendment. The reasons read thus:

"We are amending Article 226 which has become very necessary in view of certain decisions of the Supreme Court that any application for the issue of writ under Article 226 against the Union of India can only be made in the Punjab High Court because Delhi, which is the headquarters of the Union of India happens to be within the jurisdiction of the Punjab High Court. So

that, an ordinary man who wants to sue the Union of India in Kerala or Assam or Bengal or in far off places, has to travel all the way to Delhi and file his application in the Punjab High Court. In most cases for the common man whose resources are slender, it becomes an impossible thing. This demand has now arisen from everywhere. Though the original intention was never to make only the Punjab High Court the High Court against the Union of India, and it was contemplated that all the High Courts would have a similar jurisdiction, by a judicial decision of the Supreme Court, this unfortunate result has been brought about. Before the Constitution, the Privy Council took a different view altogether. They held in the Parlakimidi case and also in the case of Howrah Municipality that the seat of authority or Government was not material, so that, even if the seat, let us say, of the Union of India was Delhi, you could not sue in Delhi the Union of India for the issue of one of the writs unless the cause of action arose within the jurisdiction of this High Court also. They took quite a different view, quite the opposite view to what the Supreme Court has taken. When the law was in that state, this Constitution was framed thinking that every High Court will have jurisdiction within whose jurisdiction or territorial jurisdiction the cause of action had arisen. Therefore, we are trying to restore the position as it was in the contemplation of the framers of the Constitution in the Constituent Assembly, so that that man has not got to travel to Delhi with such scarce accommodation as is there."

It is imperative to also understand that clause (2) to Article 226 of the Constitution of India supplements clause (1) of Article 226 and not supplant it.

19. At this juncture, it may be relevant to also trace the roots and historical significance of the doctrine of *forum conveniens*. It is relevant to note that the doctrine of *forum non-conveniens* had its origins in Scotland where the Court applied this doctrine as an extension to the plea of *forum non-competens*, as the parties were not residents of Scotland as held in the case of ***Vernor vs. Elvies***; ***6 Disct. Of Dec. 4788 (1610)***. Thereafter, it appears to have been adopted by the American Courts which developed it further and which was also applied by the Courts in England. We are refraining from referring to the judgements rendered by foreign courts *in*

extenso as it is neither relevant nor germane to the *lis*.

20. Coming closer to home, the Hon'ble Supreme Court in the case of ***Kusum Ingots*** *(supra)* recognised this doctrine and had in fact referred to some judgements rendered by the High Court of Calcutta (***Bhagat Singh Bugga v. Dewan Jagbir Sawhney, 1941 SCC OnLine Cal 247*** and ***Madanlal Jalan v. Madanlal, 1945 SCC OnLine Cal 145***) and High Court of Delhi (***New Horizons Ltd. v. Union of India, 1993 SCC OnLine Del 564***) to opine 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 merits. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of *forum conveniens*. Therefore, the argument that this Court can entertain the writ petition since some part of cause of action has arisen in Delhi, would not, *ipso facto*, confer jurisdiction on this Court, if one were to apply the authoritative ratio above.

21. That said, we are now to examine the facts in order to appreciate as to whether this Court would be compelled to exercise its discretionary jurisdiction to entertain the present writ petition.

22. Certain undisputed facts are: (i) the petitioner has its registered office at Hyderabad, State of Telangana; (ii) the petitioner's plant converting RPC to CPC is located at Vishakhapatnam, State of Andhra Pradesh; (iii) the CPC produced by the petitioner is to be supplied to a unit located at SEZ in Jharsuguda, State of Orissa; (iv) the application seeking Advance Authorisation was made by the petitioner from its registered office at

Hyderabad; (v) the impugned rejection letter dated 05.02.2025 was served upon the petitioner at Hyderabad; (vi) the said impugned rejection letter was issued by the Regional Authority exercising jurisdiction over the area within which the city of Hyderabad is located.

23. Mr. P. Chidambaram, learned senior counsel sought to contend that so far as the impugned rejection letter is concerned, though it was indeed issued by the Regional Authority, Hyderabad but while seated in Delhi and was only exercising his additional charge. According to him, the fact that the Regional Authority was located at Delhi while signing the rejection letter is itself a fact which would constitute a proper *"cause of action"* falling within clause (2) of Article 226 of the Constitution of India, conferring the appropriate territorial jurisdiction upon this Court over the subject *lis.* That apart, by referring to prayer (v) of the writ petition, he has also emphasised that the petitioner has laid challenge to Notification No.68/2023 dated 07.03.2024 issued by the DGFT which itself is located in Delhi. He contended that the impugned rejection letter being based on this notification, the issuance of such notification at Delhi could also be construed as the *"cause of action"* giving reason to file the writ petition at Delhi.

24. The above contentions are fallacious and are unmerited in our considered opinion. So far as the first submission is concerned, the Competent Authority while rejecting the application *vide* the impugned letter was acting as the Regional Authority exercising power, authority and jurisdiction over the geographical area within which the petitioner was located, i.e., at Hyderabad. As such, the authority conferred upon the

Regional Authority was restricted to such geographical area and not beyond. It is not the case of the petitioner and admittedly so, that the Regional Authority was conferred power to exercise such authority pan India. Thus, the mere appending of his signature at a particular location would not, *ipso facto*, be the primordial consideration while examining the issue of *"cause of action"* or territorial jurisdiction of a High Court under clause (2) of Article 226 of the Constitution of India. Thus, for all intents and purpose, the Regional Authority had rejected the application seeking Advance Authorisation at Hyderabad, even though he was seated at Delhi.

25. So far as the next submission predicated on the prayer in clause (v) is concerned, in our considered opinion, the same is unpersuasive and is unmerited. This submission is not available to the petitioner in view of the ratio laid down by the Hon'ble Supreme Court in ***Kusum Ingots*** *(supra)* in para nos.18 to 23. The same read thus:

> *"**18.** 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.*
>
> ***19.** Passing of a legislation by itself in our opinion does not confer any such right to file a writ petition unless a cause of action arises therefor.*
>
> ***20.** A distinction between a legislation and executive action should be borne in mind while determining the said question.*
>
> ***21.** A parliamentary legislation when it receives the assent of the President of India and is published in the Official Gazette, unless specifically excluded, will apply to the entire territory of India. If passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner. A writ court, it is well settled, would not determine a constitutional question in a vacuum.*

> ***22.*** *The Court must have the requisite territorial jurisdiction. An order passed on a writ petition questioning the constitutionality of a parliamentary Act, whether interim or final keeping in view the provisions contained in clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act.*
>
> ***Situs of office of the respondents — whether relevant:***
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> ***23.*** *A writ petition, however, questioning the constitutionality of a parliamentary Act shall not be maintainable in the High Court of Delhi only because the seat of the Union of India is in Delhi. (See Abdul Kafi Khan v. Union of India [AIR 1979 Cal 354] .)"*

It is also relevant to consider the opinion rendered by the Hon'ble Supreme Court in ***State of Goa*** *(supra)*. Contrary to what the learned senior counsel for the petitioner sought reliance on this decision for, the ratio seems to favour the respondents. This would be clear from para nos.16, 17, 20 and 21 of the said judgement which read thus:

> *"**16.** The expression "cause of action" has not been defined in the Constitution. However, the classic definition of "cause of action" given by Lord Brett in Cooke v. Gill [Cooke v. Gill, (1873) LR 8 CP 107] that "cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court", has been accepted by this Court in a couple of decisions. It is axiomatic that without a cause, there cannot be any action. However, in the context of a writ petition, what would constitute such "cause of action" is the material facts which are imperative for the writ petitioner to plead and prove to obtain relief as claimed.*
>
> ***17.*** *Determination of the question as to whether the facts pleaded constitute a part of the cause of action, sufficient to attract clause (2) of Article 226 of the Constitution, would necessarily involve an exercise by the High Court to ascertain that the facts, as pleaded, constitute a material, essential or integral part of the cause of action. In so determining, it is the substance of the matter that is relevant. It, therefore, follows that the party invoking the writ jurisdiction has to disclose that the integral facts pleaded in support of the cause of action do constitute a cause empowering the High Court to decide the dispute and that, at least, a part of the cause of action to move the High Court arose within its jurisdiction. Such pleaded facts must have a nexus with*

the subject-matter of challenge based on which the prayer can be granted. Those facts which are not relevant or germane for grant of the prayer would not give rise to a cause of action conferring jurisdiction on the court. These are the guiding tests.

xxx xxx xxx

20. *In our opinion, the High Court ought not to have dismissed the applications of the appellant without considering the petition memo which has no semblance of a case having been made out as to how part of cause of action arose within the territorial limits of the High Court or without any pleading as to how any right has been affected within the territory of Sikkim.*

21. *Even otherwise, the High Court was not justified in dismissing the interim applications. Assuming that a slender part of the cause of action did arise within the State of Sikkim, the concept of forum conveniens ought to have been considered by the High Court. As held by this Court in Kusum Ingots & Alloys Ltd. v. Union of India [Kusum Ingots & Alloys Ltd. v. Union of India, (2004) 6 SCC 254] and Ambica Industries v. CCE [Ambica Industries v. CCE, (2007) 6 SCC 769] , even if a small part of the cause of action arises within the territorial jurisdiction of a High Court, the same by itself could not have been a determinative factor compelling the High Court to keep the writ petitions alive against the appellant to decide the matter qua the impugned notification, on merit."*

The Hon'ble Supreme Court in the above case was examining a case where the State of Goa had levied a tax in respect of lottery business being run by the respondent before it in Goa. However, the respondent company was located in the State of Sikkim. Aggrieved by such levy, the respondent company had filed a writ petition before the High Court at Sikkim. The Apex Court opined that the immediate civil consequence arising from the notification impugned therein was that tax @ 14% which was to be paid by the respondent company at Goa. No consequence or effect was felt in Sikkim. In fact it was noticed by the Hon'ble Supreme Court that pleadings did not reflect any adverse consequence within the local limits of the

territorial jurisdiction of the High Court at Sikkim.

26. Similarly, prayer (v) in this petition is admittedly in the alternative to the other prayers, and effect and consequence of the relief of quashing the Notification No.68/2023 dated 07.03.2024 would only be at Hyderabad or Vishakhapatnam or at Jharsuguda, but surely not at Delhi. In fact there would be no consequence at Delhi *qua* the petitioner. In ***Sterling Agro*** *(supra)*, the Full Bench of this Court, while relying upon ***Kusum Ingots*** *(supra)* and ***Ambica Industries vs. CCE; (2007) 6 SCC 769***, had authoritatively laid down the binding opinion that the Court has to apply the principle of *forum conveniens* on the anvil that merely because some cause of action has arisen within the territorial jurisdiction of this Court, would not itself constitute to be the determining factor compelling the Court to entertain the matter. Para nos.33 to 35 of ***Sterling Agro*** *(supra)* read thus:

> *"33. The concept of forum conveniens fundamentally means that it is obligatory on the part of the court to see the convenience of all the parties before it. The convenience in its ambit and sweep would include the existence of more appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. The balance of convenience is also to be taken note of. Be it noted, the apex court has clearly stated in the cases of Kusum Ingots and Alloys Ltd. v. Union of India (2004) 120 C-C 672; (2004) 6 SCC 254, Musaraf Hossain Khan v. Bhagheeratha Engg. Ltd. (2006) 130 C-C 390; (2006) 3 SCC 658 and Ambica Industries v. CCE (2007) 213 ELT 323; [2009] 20 VST 1 (S.C.), about the applicability of the doctrine of forum conveniens while opining that arising of a part of cause of action would entitle the High Court to entertain the writ petition as maintainable.*
>
> *34. The principle of forum conveniens in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the court would not itself constitute to be the determining factor compelling the court to entertain the matter. While exercising jurisdiction under articles 226 and 227 of the Constitution of India, the court cannot be totally oblivious of the concept of forum conveniens. The Full Bench in New India Assurance Co.*

Ltd. v. Union of India, AIR 2010 Delhi 43; (2011) 166 Comp Cas 87 (Delhi), has not kept in view the concept of forum conveniens and has expressed the view that if the appellate authority who has passed the order is situated in Delhi, then the Delhi High Court should be treated as the forum conveniens. We are unable to subscribe to the said view.

35. In view of the aforesaid analysis, we are inclined to modify the findings and conclusions of the Full Bench in New India Assurance Co. Ltd. v. Union of India, AIR 2010 Delhi 43; [2011] 166 C-C 87 (Delhi) and proceed to state our conclusions in seriatim as follows :

(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the Tribunal/appellate authority/revisional authority is situate and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the court cannot be accepted inasmuch as such a finding is totally based on the situs of the Tribunal/appellate authority/revisional authority totally ignoring the concept of forum conveniens..."

That apart, the ratio laid down by the Full Bench of this Court in ***Sterling Agro*** *(supra)* would be binding upon this Bench. No law is required to state that a judgment of the Full Bench would be binding on the Benches of a lesser strength. Ignoring the judgment of the Full Bench, in our view, would undermine its soundness. Reference in this regard can be made to the decision in ***Karnail Singh vs. State of Haryana & Ors.; 2024 SCC OnLine SC 961***.

27. Yet another argument, though addressed weakly, was the fact of the petitioner having filed a writ petition before this Court which was entertained and no similar grounds of objection were taken by the respondents and therefore this petition may also be treated as maintainable. We have not found any material placed on record by the petitioner to substantiate this argument. Yet, we are examining the said submission for what it is worth. In our considered opinion, merely because the respondents

earlier had not objected to the jurisdiction and this Court had entertained the previous writ petition, would not by itself bar the objections being raised now or being considered by this Court. It is trite, there is no estoppel against law. The law being the one declared and enunciated by the Hon'ble Supreme Court in ***Kusum Ingots*** *(supra)* and the Full Bench judgement of this Court in ***Sterling Agro*** *(supra)* particularly the consideration of the doctrine of *"forum conveniens*". Ergo, the entertainment of the previous writ petition by this Court would neither be a precedent nor enure to the benefit of the petitioner. The submission does not commend to us.

28. Thus looking at it any which way, we are unable to subscribe to the interpretation put forth by the learned senior counsel for the petitioner. We are clear that the ratio in the case of ***Kusum Ingots*** *(supra)* and ***Sterling Agro*** *(supra)* would squarely apply to the facts obtaining herein and resultantly, we are of the opinion that this Court would not have the requisite territorial jurisdiction to entertain the present writ petition nor would it be the *"forum conveniens*" to decide the *lis*.

29. The petition is dismissed on the above grounds. However, it is needless to observe that it will always be open for the petitioner to invoke the jurisdiction of the appropriate High Court.

30. Pending applications, if any, too are disposed of.

TUSHAR RAO GEDELA, J

DEVENDER KUMAR UPADHYAY, J

FEBRUARY 07, 2025/*rl*