

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
(D.B. Hon'ble Shri P.K. Jaiswal & Hon'ble Shri Vivek Rusia, JJ)

W.A. No.6/2016

ALL INDIA STEEL RE-ROLLERS ASSOCIATION
V/s.
THE UNION OF INDIA & ORS.

Shri Naman Nagarath, learned Senior counsel with Shri H. Thakur,
Advocate for the appellant.

Shri Deepak Rawal, ASG for respondents No.1, 2 and 4.

Shri Prasanna Prasad, Advocate for respondent No.3.

Shri S.C. Bagadiya, learned Senior Advocate with Shri V.K. Jain,
learned counsel for respondent No.5.

W.A. No.496/2015

MADRAS STEEL REROLLERS ASSOCIATION
V/s.
ANIK INDUSTRIES LIMITED & ORS.

Shri Naman Nagarath, learned Senior counsel with Shri H. Thakur,
Advocate for the appellant.

Shri S.C. Bagadiya, learned Senior Advocate with Shri V.K. Jain,
learned counsel for respondent No.1.

W.A. No.637/2015

THE COMMISSIONER OF CUSTOMS (IMPORT-I)
V/s.
ANIK INDUSTRIES LTD & ORS.

Shri Prasanna Prasad, Advocate for the appellant.

Shri S.C. Bagadiya, learned Senior Advocate with Shri V.K. Jain,
learned counsel for respondent No.1.

Shri Deepak Rawal, ASG for respondents No.2 and 6.

W.A. No.639/2015

THE CENTRAL BOARD OF EXCISE AND CUSTOMS & ORS.
V/s.
ANIK INDUSTRIES LTD & ORS.

Shri Prasanna Prasad, Advocate for the appellant.

Shri S.C. Bagadiya, learned Senior Advocate with Shri V.K. Jain,
learned counsel for respondent No.1.

CONTEMPT APPEAL No.1/2016

ASHUTOSH BARANWAL

V/s.

ANIK INDUSTRIES LTD

Shri Prasanna Prasad, Advocate for the appellant.

Shri S.C. Bagadiya, learned Senior Advocate with Shri V.K. Jain,
learned counsel for respondent.

JUDGEMENT

(14.06.2016)

Per P.K. Jaiswal, J :-

By these intra court appeal, the intervenor of W.P. No.8501/2014 and the respondents are challenging the order dated 19.10.2015 passed in W.P. No.8501/2014 and 13.9.2015 passed in W.P. No.9169/2014 whereby the learned Writ Court allowed the writ petition and directed that the Commissioner of Customs (Import) shall allow clearance of goods covered by commercial invoice dated 4.9.2014 and 18.9.2014 and the consignment of Alloy Steel and Deformed Bars also forthwith lying in the port of Mumbai and Chennai. Para 14 of order dated 13.9.2015 passed in W.P. No.9169/2014 reads as under :-

“14. Consequently the petition is partly allowed and it is directed that the respondent No.3 shall allow clearance of the goods covered by commercial invoice dated 4th September, 2014 and consignments of Alloy Steel Deformed Bars also forthwith lying in the port of Chennai. However, it is made clear that this Court is not making any observation regarding the application of the BIS Standards in accordance with the impugned Circular dated 07/11/14. Even after release of the goods, if the respondent Department is still of the opinion that the consignment is not of the Bureau of India standards, it is free to take action in accordance

with the provisions of law and that the petitioner shall co-operate fully with the respondent in the investigation of the same.”

and last para of order dated 19.10.2015 passed in W.P.No.8501/2014 reads as under :-

At the outset, it has been argued before this Court that the co-ordinate Bench of this Court vide order dated 30th September, 2015 passed in W.P. no. 9169/2014 (Anik Industries Limited Vs. The Union of India and others) has allowed the identical writ petition. Following order has been passed by this Court.

This writ petition has been filed under Article 226 of Constitution of India, challenging the Circular No.450/176/2014-Cus-IV dated 7/11/2014, restricting the petitioner from importing Alloy Steel Deformed Bars falling under Chapter Heading 7228 of the CTA.

02 Briefly stated the facts of the case are that the petitioner Anik Industries Limited is a private company, incorporated under the Companies Act and engaged in the business of import of Alloy Steel deformed reinforcement bars. In the Course normal business the petitioner has placed an order for import of the goods Alloy Steel reformed bars as per the contract bearing No.HL1415142-S dated 24/06/2014, by M/s. Hebei Taigang Iron & Steel Rolling Company Limited, China. The said manufacturer is a registered manufacturer of goods in accordance with the British Standards. The goods were shipped under the Commercial Invoice dated 04/09/2014. The Chinese manufacturer also issued product quality certificate known as MTC. However, the goods were refused clearance by Respondent No.3 by placing reliance on a circular issued by the Central Board of Excise and Customs, New Delhi. Circular No.450/176/2014-Cus-IV dated 07/11/2014 (hereinafter referred to as the “impugned Circular”) the goods imported by petitioner had arrived in India at the port of Mumbai. Counsel for the petitioner vehemently urged the fact that this was much before the Steel Products (Quality Control) Second Amendment Order has been made effective. However, respondent No.3 The Commissioner of Customs disregarded the past practice and refused to clear the goods. Hence, the present petition.

03 Counsel for the petitioner has raised the following grounds challenging the impugned circular dated

07/11/14. Firstly, Counsel urged that the goods had arrived at the port of Chennai much before the steel products quality control order. The second amendment order has been made after the circular impugned dated 07/11/14 was in force w.e.f. 04/12/14. The contract between the parties is dated 24th June 2014. The schedule of the standing order issued by the Central Government for steel quality control order dated 12/03/12 was amended vide order dated 31/03/14 and the goods of the petitioner are covered at Sr. No.5 of the amended schedule column No.4. However, local manufacturers of steel protested against the import of alloy steel by filing representations to indicate that alloy steel products were not covered under Serial No.5 of the amended schedule to the Steel Quality Control Order. Counsel vehemently urged that the consignments of 25 M.M., 12 M.M., 16 M.M. & 2 M.M. imported deferred bars aggregating 4426.280 MT covered by the commercial invoice dated 4th September 2014 were not answerable to the 2nd Amendment of 2014 which came into effect from 04th December 2014 and the respondents were wrongly not clearing the goods of the petitioner.

04 Secondly, Counsel also urged that the impugned Circular was also challenged by this petition to be arbitrary, unreasonable and perverse since it does not satisfy the dual test as the items mentioned under the relevant B.I.S. (Bureau of Indian Standards) and its corresponding heading of ITC (HS) Indian Trade Classification (Harmonised Systems) column No.3. The goods under Sr. No.5 afore mentioned cover only one heading/ sub-heading 72/31090 and 72/42090 and are goods pertaining to non alloy steel, whereas the goods of the present petitioner are alloy steel and not covered under Column No.3 of the amended schedule. The mere fact that the corresponding BIS 1786 covers both alloy steel as well as non-alloy steel is not sufficient to attract the provisions of the Steel Quality Control Order. And as such, Counsel urged that the impugned Circular is arbitrary, unreasonable and violative of Article 14 of the Constitution of India.

05 Counsel for the petitioner has vehemently urged that the impugned Circular has been issued with a malafide intention to favour some of the manufacturers and/or re-rollers of steel, who have vested interests and discriminate against persons like the Petitioners. The impugned Circular is a clear case of bias against the Petitioners and reveals the case of nepotism in relation to some of the manufacturers and/or re-rollers of steel. The impugned Circular, is therefore, arbitrary, unreasonable and violative of Article 14 and Article 19(1) (g) of the

Constitution of India.

06 Counsel for the petitioner also urged that this Court clothed with the jurisdiction to decide the petition primarily because the petitioner Anik Industries Limited has its registered office at Indore and conducted its business therefrom is sufficient ground to grant jurisdiction to this Court and no question should be raised regarding the application of the Circular which was published at Delhi; to the cause of the respondent as impugned in the writ appeal/petition. It is also submitted that the imported goods are intended for sale within the jurisdiction of this Court, therefore, Indore Court is having jurisdiction to try the case and, therefore, the writ petition is maintainable. Counsel for the petitioner has vehemently urged the fact that Circulars issued by the Central Government can be challenged anywhere in the whole of the country. Moreover, the Circular has also been considered by the Bombay High Court as relied on by the respondent and therefore no question regarding the jurisdiction of this Court in this regard can be raised by the respondent.

07 Per contra Counsel for the respondent has submitted that the constitutionality and legality of the Circular No.450/176/2014-Cus-IV dated 07/11/2014, raised by the petitioner is without jurisdiction and would be a matter to be decided by the Division Bench. Moreover, Counsel submitted that the Circular had been issued from New Delhi and the bill of the goods imported by the petitioner dated 13/09/2014 had reached the port in October 2014 and that the Central Government by the order dated 12/03/2012 had categorically stated that the product imported by the petitioner was included in the schedule and therefore the petitioner was not entitled to release of his goods as being claimed. More importantly Counsel submitted that petition was not maintainable and Indore High Court did not have the jurisdiction to try the Writ Petition. Counsel relied on *Global Tradex Ltd. vs. Union of India & ors.* along with other connected matters i.e. *W.P. No.2909/14 (Magnum Steels vs. Union of India & ors.)*, *W.P. No.2962/2014 (Steel Mart India Private Limited vs Union of India & ors and W.P. No.(L) No.2963/2014 (Sri Jagannath Steel Co. vs. Union of India & ors.)*, wherein the Bombay High Court in the matter of *Global Tradex Limited (Supra)* has held thus:

“ In the above circumstances we do not find any basis to hold that the Circular issued on 7th November, 2014 is ultra vires Article 14 of the Constitution of India.

We are of the opinion that the Circular in no way

prohibits the Petitioners from importing the goods. The same does not hold up unnecessarily the consignments. We are also not in agreement with the petitioners that the Circular is based on irrelevant, extraneous and non-germane considerations. The circular is also not discriminatory or malafide. It is not ignoring any of the provisions of law. The Circular does not violate the mandate of Article 19(1) (g) of the Constitution of India or 300A of the Constitution of India. As a result of this conclusion, the Writ Petition fail. Rule is discharged in each of these Writ Petitions. There will be no orders as to costs.”

Counsel also relied in the case of M.P. State Mining Corporation Limited vs. Sanjeev Bhaskar & ors., (2013) 12 SCC 326. Counsel prayed that the petition was without merit and the same be dismissed.

08 On considering the above submissions, I find that the jurisdiction of this Court is well clothed to try the issues. However, regarding the constitutionality and legality of the Circular, that is challenged before me, I find that the Bombay High Court has rightly held that Circular dated 07/11/2014 is not ultra vires the Constitution of India. However, this brings me to the second facet of the case in the matter of Global Tradex Limited (Supra), the Court has also held that “ We are of the considered opinion that the Circular in no way prohibits the petitioner from importing of goods and the same does not hold up unnecessarily the consignments”

09 And in this light the important question to be considered is whether the Steel Alloy Deformed Bars would be included in Sr. No.5? To crystalize the question I find that by the Circular dated 07/11/2014, issued by Govt. of India, Ministry of Finance, New Delhi the relevant factor to be considered in determining the applicability of BIS standard would be the description of the product in the Indian Standard and not the one indicated by the ITC (HS) Code. To put it simply; the import of the said Alloy Steel should be covered by the description of the product in the Indian Standard would require BIS certification and Counsel for the respondent submitted that the impugned certificate has received confirmation from both Ministry of Steel and Bureau of Indian Standards and hence it is applicable to the petitioner. I however find that such is not the present case. So also considering the submissions of both the Counsel; I also find that the explanation to the amended schedule indicates that any case falling under the ITC (HS) Codes

notified under the Order shall not be restricted if they are not corresponding BIS Standard in Column and the explanation can not be read to mean Steel Quality Control order shall be applicable to goods for which no ITC (HS) Code have been notified at all. Similarly, the issuance of the Steel Quality Control order Alloy Steel Products not covered by the headings and sub-heading of the ITC (HS) mentioned in the order have been allowed clearance at various ports all over India. And in this light it would be necessary to consider that the question is yet to be decided by the appropriate Appellate Authority whether the Alloy Grade Bars and high strength Deformed Steel Bars are not covered by the mandatory certification. In this light placing reliance on the fact that even in the matter of Global Tradex Limited (Supra) the Mumbai High Court held that "We are of the opinion that the Circular in no way prohibits the Petitioners from importing the goods. The same does not hold up unnecessarily the consignments."

10 *Thereby clearly indicating that the consignment of the present petitioner also has been wrongly withheld and is not necessary under the circumstances. Similarly, the next important question that now requires determination is whether this Court has the jurisdiction to pass the orders. Placing reliance on Naval Kishore Sharma vs. Union Of India and ors. the Apex Court has held thus:*

"Cause of actions if wholly or in part arose within territorial jurisdiction of High Court or not, held, is to be determined in light of nature and character of proceedings under Art.226 High Court can issue a writ if cause of action wholly or partially arises within its territorial jurisdiction even if person or authority against whom writ is issued is located outside its territorial jurisdiction. However, in order to maintain a writ petition, petitioner has to establish that his legal right has been infringed by the respondents within territorial limit of High Court's jurisdiction."

11 *In this light, as mentioned in para 5 of the judgment above, Anik Industries Limited has registered office at Indore and conducts its business therefrom. Besides, the agreement has been entered into by the petitioner at Indore itself. Besides from the fact that the Bombay High Court has considered the impugned Circular; and similarly, the Court of Madras is also seized of the matter clearly indicating that the impugned Circular can be challenged in the present case at Indore High Court also.*

12. *Although the goods retained at the port of Chennai for want of clearance and have not been*

transported to Indore and hence part of the cause of action accrues to the petitioner at Indore. It was urged that goods falling under ITC (HS) Codes and duly notified under the Order shall not be restricted if they are not covered by the corresponding BIS Standard in Column (1). However nothing in the said Explanation can be construed to mean that the Order shall be applicable to goods for which no ITC (HS) Codes have been notified at all.

13 Similarly, on considering the question of applicability of the impugned Circular dated 07.11.2014 bearing No.450/176/2014-Cus-IV and the fact that agreement is dated 24.06.2014 regarding the petitioner's goods have been received at the port in consequence of commercial invoice dated 04th September 2014, I find that the Circular cannot be applied retrospectively to the consignment of the petitioner and hence in this light also the petition needs to be partly allowed.

14 Consequently the petition is partly allowed and it is directed that the respondent No.3 shall allow clearance of the goods covered by commercial invoice dated 4th September, 2014 and consignments of Alloy Steel Deformed Bars also forthwith lying in the port of Chennai. However, it is made clear that this Court is not making any observation regarding the application of the BIS Standards in accordance with the impugned Circular dated 07/11/14. Even after release of the goods, if the respondent Department is still of the opinion that the consignment is not of the Bureau of India standards, it is free to take action in accordance with the provisions of law and that the petitioner shall co-operate fully with the respondent in the investigation of the same.

15 With the aforesaid observation and directions, the petition is partly allowed to the extent herein above indicated.

No costs. CC as per rules.

In light of the aforesaid judgment, this present writ petition also stands allowed. Respondent no. 3 / the Commissioner of Customs (Import), Mumbai shall allow clearance of the goods covered by Commercial invoice dated 18th September, 2014 (Annexure P/4) and the consignments of Alloy Steel of Deformed Bars also forthwith lying in the port of Mumbai.

C c as per rules.

- 2.** Brief facts of the case are that the writ petitioner M/s Anik Industries Ltd is a private company, incorporated under the Indian

Companies Act, 1956 and interalia engaged in the business of import of Alloy Steel Deformed Bars / Enforcement Bar falling under heading 72.28 of Chapter 72 covering Iron and Steel of the First Schedule to the Customs Tariff Act, 1975 (for short 'CTA') read with corresponding schedule - I of ITC (HS) classification of import and export items issued by the Central Government in exercise of powers conferred by the Foreign Trade (Development & Regulation) Act, 1992 read with the Foreign Trade Policy announced from time to time.

3. The respondent No.1 placed an order for import of alloy steel deformed bars as per contract dated 27.8.2014 (Annexure P/3). As per contract the said goods were to be manufactured by M/s Benxi Beiyong Iron and Steel (Group) Company Ltd., China. The said company registered for manufacture of said goods in accordance with the British Standards. The goods were shipped under Commercial invoice dated 18.9.2014 (Annexure P/4). The said manufacturer has also issued product quality certificate also known as Mill Test Certificate (MTC) in respect of the alloy steel deformed bars. The goods were exported from China port as per billing of lading on 13.9.2014. As per sales contract (Annexure P/3) the quality of supply was stated as “BS4449:2005 500B (Boron content >0.0008%)”, which means that the goods were complying with the British Standard No.BS 4449:2005.

4. As per Custom Tariff Act, non-alloy steel is covered from Heading 7206 to 7217 whereas alloy steel, also defined as “other alloy steel” in Note 1(f) of Chapter 72 of the CTA, is covered by Headings 7224 to 7229. Chapter 72 is divided into 4 parts. Part -II covers non-alloy steel and Part -IV covers alloy steel. The goods in question are alloy steel and classifiable under Heading 7228 of CTA. When the goods reached to Mumbai air port clearance were refused by the department on the ground that the consignment did not have a prior BIS Certification, which was necessary as per Annexure P/6 dated 12.3.2012 read with Annexure P/7 dated 31.3.2014 and Circular Annexure P/10. Steel and Steel products (Quality Control) second amendment 2012 (Annexure P/6) became

effective on 2.9.2012. It deals with steel and steel products which are defined in the para 2 (I) as item specified in column No.2 of the Schedule which reads as under :-

India Standard Number	Title	ITC (HS) Code
1	2	3
1786	High Strength deformed steel bars and wires for concrete reinforcement (8 mm and above)	72131090 72142090

From the aforesaid entry, it is clear that it only deals with high steel deformed bars and wires and not deformed bars of alloy steel.

5. The steel and steel products (Quality Control) second amendment order 2014, which came into force w.e.f. 1.4.2014 (Annexure P/7), which includes certain further item to the schedule to the order of 2012 as item requiring mandatory bureau of Indian Standards Act (BIS) certification. Entry No.5 reads as under:-

Indian Standard Number	Title	ITC (HS) Code	Date of coming into force of the product in the standard to the extent given below	
1	2	3	4	
			(A) Product	(B) With effect from
1786	High Strength deformed steel bars and wires for concrete reinforcement (8 mm and above)	72131090 72142090	(a) High strength deformed steel bars and wires of diameter less than 12 mm	1 st October 2014
			(b) High Strength deformed steel bars and wires of sizes between 12 mm and below 16 mm	31 st March, 2013.
			(c) for other products excluding (a) & (b) above	12 September, 2012

6. From the perusal of the aforesaid entry, it is clear that only

the date of coming into force of certification requirement is added. The amendment order dated 31.3.2014 contains the following explanation which reads as under :-

***Explanation** - “For the purpose of this order, it is hereby clarified that while taking a decision on the levy of duty as per the Customs Tariff heads, the provisions of this order shall apply to the specific products described under corresponding entry under column (2), covered under the Indian Standard number mentioned under corresponding entry under column (1) and in such case this order shall not apply to those products which falls under the ITC (HS) Codes mentioned in corresponding entry under column (3) but do not fall under the corresponding Indian Standards mentioned under Column(1).*

7. Order dated 31.3.2014 was followed by clarification dated 7.11.2014 (Annexure P/10). The clarification order dated 7.11.2014 was challenged on the ground that entry in the schedule of the control order cannot be re-written or extended by the departmental clarification and by a subsequent circular the department cannot add a new condition to the parent notification. It was argued by the learned counsel for the respondent No.1 that if an alloy deformed steel bars are to be included in the relevant control order then it had to be done by amending the schedule to the order itself and not by issuing any departmental clarification. Secondly, no clarification circular can be retrospective that is to say it can't apply to things already done.

8. In the case in hand, when the sales contract dated 27.8.2014 took place, the clarification dated 7.11.2014 did not exist. The goods were dispatched from the Chinese port on 4.9.2014 and reached at Indian port. Once the contract is complete and the goods in question have left the port of the supplier no retrospective condition can be imposed that in addition to satisfying the British Standard. The goods must also satisfy the BIS standards in advance of supply. The sole contention of learned counsel for the respondent No.1 before the writ court was that the clarification dated 7.11.2014 cannot have deformed alloy steel bars in the schedule of products, which require bureau of Indian Standard

Certification with retrospective effect. Para 2 to 6 of circular dated 7.11.2014 (Annexure P/10) reads as under :-

“2. The matter has been examined by the Board. It is seen that in few imports at Chennai the imported goods contained more than 0.0008% Boron and fell under CTH 7228 while the said steel products quality control Order, 2012 mentions goods falling under CTH 72131090 and 72142090 (Sl.No. 5 of the said Order refers). Since CTH 7228 was not mentioned in the said Steel Products Quality Control Order, 2012 the Commissioner of Customs (Imports) Chennai referred the matter to Bureau of the Indian Standards for clarification. The Board also made a reference to Ministry of Steel to align the Steel Products Quality Control Order, 2012 with the correct CTH.

3. In this regard, Ministry of Steel has informed that the Steel Products Quality Control Order, 2012 is strictly based on the relevant Indian Standard through ITC (HS) Code has been provided for reference purposes. This is also clarified in the “Explanation” to the said Steel Products Quality Control Order, 2012 Ministry of steel has concluded that all products covered by the relevant Indian Standard fall under the said Steel Products Quality Control Order, 2012 and import of such products without BIS certification is in circumvention of the said Order. It is categorically confirmed that re-bar/TMT bar containing 0.0008% or more Boron falling under alloy steel category is covered by Indian Standard IS 1786 regardless of the ITC (HS) Code given in the said Steel Products Quality Control Order, 2012. Ministry of Steel has urged that imports circumventing the said Steel Products Quality Control Order, 2012 should be stopped in view of their damage to the interest of the Indian Steel Industry as well as from the angle of safety of infrastructure and housing projects in the country.

4. Bureau of Indian Standards has confirmed that as per Amendment No. 1 to IS 1786:2008, the addition of micro-alloying strengthening elements such as Niobium , Vanadium, Boron and Titanium are permitted when used individually or in combination provided the total contents shall not exceed 0.30%. Bureau of Indian Standards has recommended that its clearance should be sought in case importers declare that the re-bars/alloy grade bars/high strength deformed steel bars and wires for concrete reinforcement are not covered under mandatory BIS certification.

5. The Board notes that Ministry of Steel and the Bureau of Indian Standards are mandated to give a ruling on the

application of BIS certification on the said imported items. Therefore, in view of the categorical confirmation received from both Ministry of steel and Bureau of Indian Standards, the relevant factor in determining the applicability of BIS Standard would be the description of the product in the Indian Standard and not the indicated ITC(HS) Code. Further, IS 1786 2008 permits the use of Boron and other specified elements individually or in combination upto a limit of 0.30%. Hence imports of said imported items that are covered by the description of the product. In the Indian Standard would require BIS certification. In case of doubt, a clarification may be sought from Bureau of Indian Standards. The board is separately requesting Ministry of Steel to include all relevant ITC (HS) Codes in the Steel products Quality Control Order, 2012.

6. Board desires that the fields formations may be suitably alerted to allow the import of said items strictly in accordance with the aforementioned legal provisions including that of BIS certification, as applicable.”

9. The contention before the writ court was that the goods had arrived at the port of Chennai and Mumbai much before the steel product quality and control order. The second amendment order has been made after the circular dated 7.11.2014 was in-force w.e.f. 4.12.2014. The contract between the parties is dated 24.6.2014 and the departments were wrongly not clearing the goods of the respondent No.1.

10. A preliminary objection was also raised by the department as well as by the intervener regarding territorial jurisdiction of this court on the ground that the goods were lying at Mumbai and Chennai port. The circular dated 7.11.2014 was issued at Delhi. The High Court of M. P. at Indore Bench is having no territorial jurisdiction to draw the goods and the writ petition filed by the respondent No.1 was not maintainable.

11. To meet out the aforesaid preliminary objection the respondent No.1 pointed out to the learned writ court that the respondent No.1 was having their office at Indore. The order was placed from Indore, letter of credit was opened by the Indore Branch of IDBI Bank. The goods were intended to be brought to Indore. The respondent No.1 company is having corporate office at Indore, but they wrongly in the writ petition have stated that their registered office is at Indore. An application was

filed for correction in the writ petition / cause title of the writ petition on the ground that due to oversight in place of corporate office, it has been typed as registered office whereas in the correspondence with the buyer they have shown their corporate office at Indore. In Annexure P/2 the corporate address of the respondent No.1 is mentioned the same. It is also stated that the term corporate office is a recognition meaning in the commercial word and significant place from where the commercial activity of the corporate entity is conducted. All the transactions have taken place from Indore and as per Article 226 (2) of the Constitution of India, a writ petition can be filed at any place where a part of the cause of action has arisen. In the case in hand, the acceptance of order was also communicated to the respondent No.1 at Indore. The payment of price of the consignment also took place at Indore. A part of the cause of action has arisen at Indore and the Court at Indore has a territorial jurisdiction to entertain this petition.

12. The learned writ court relying on the judgment of the Apex Court in the case of Naval Kishore Sharma V/s. Union of India reported as 2014 (9) SCC 329 came to the conclusion that the applicability of circular dated 7.11.2014 can be challenged at Indore also. The learned writ court allowed the writ petition by order dated 30.9.2015 passed in W.P. No.9169/2014 and directed "that the respondent No.3 shall allow clearance of the goods covered by commercial invoice dated 4th September, 2014 and consignments of Alloy Steel Deformed Bars also forthwith lying in the port of Chennai. However, it is made clear that this Court is not making any observation regarding the application of the BIS Standards in accordance with the impugned Circular dated 07/11/14. Even after release of the goods, if the respondent Department is still of the opinion that the consignment is not of the Bureau of India standards, it is free to take action in accordance with the provisions of law and that the petitioner shall co-operate fully with the respondent in the investigation of the same".

13. As per Clause (2) of Article 226 of the Constitution, it is

clear that High Court can issue a writ when the person or the authority against whom the writ is issued is located outside his territorial jurisdiction; if “cause of action” wholly or partly arises within the Court’s territorial jurisdiction. “The cause of action” for the purpose of Article 226 (2) of the Constitution, for all intent and purpose must be assigned the same meaning as envisaged under Section 20 (c) of the Code of Civil Procedure. The term “cause of action”, as per Clause (2) of Article 226 of the Constitution came up for consideration time and again before the Apex Court.

14. In the case of **Kusum Ingots & Alloy Limited v. Union of India** reported in **(2004) 6 SCC 254**, the Apex Court, keeping in view that expression used in Clause (2) of Article 226 of the Constitution of India, has held that even if a small fraction of “cause of action” accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter.

*“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 **Lt. Col. Khajoor Singh v. Union of India**, (AIR 1961 SC 532) has, thus, no application.*

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.”

15. In the case of **Union of India v. Adani Exports Limited** reported in **(2002) 1 SCC 567**, the Apex Court held that in order to confer jurisdiction on a High Court to entertain a writ petition, it must disclose that integral facts pleaded in support of the “cause of action” do constitute a cause so as to empower the Court to decide the dispute and the entire or a part of it arose within its jurisdiction. 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 are such which have a nexus or relevance with the *lis* i.e. Involved in the case.

16. Shri Naman Nagarath, learned Senior Counsel for the appellant in Writ Appeals No.06 and 496 of 2016 has drawn our attention to paragraphs No.10 to 13 of decision of the Apex Court in the case of **Naval Kishore Sharma v. Union of India & others** reported in (2014) 9 SCC 329 and in the case of **Alchemist Limited & another v. State Bank of Sikkim & others** reported in (2007) 11 SCC 335 and submitted that the facts mentioned in the writ petition have no nexus or relevance with the *lis* involved in the case and Indore Bench of Madhya Pradesh High Court had no territorial jurisdiction to entertain the writ petition and the learned Writ Court has committed an error in entertaining the writ petition.

17. Shri Prasanna Prasad, learned counsel for the department supported the arguments of Shri Naman Nagarath, learned Senior Counsel for the appellant and further drawn our attention to the decision of the Apex Court in the case of **Kumari Anukirti Mishra v. Gujarat National Law University & others** reported in (2015) 2 MPLJ 143 and submitted that no part of cause of action had arisen at Indore Bench of Madhya Pradesh High Court and the learned Writ Court committed a legal error in exercising jurisdiction under Article 226 of the Constitution of India beyond its territorial jurisdiction.

18. On merits, they have drawn our attention to the circular dated 07.11.2014 and submitted that the same is clarificatory in nature, and therefore, the same would apply retrospectively. Learned Writ Court committed an error in holding it otherwise by allowing the writ petition. To support the aforesaid argument, he has drawn our attention to paragraph 41 of the decision of the Apex Court in the case of **Union of India v. N.R. Parmar** reported in (2012) 13 SCC 340.

19. Per contra, Shri S.C. Bagadiya, learned Senior Counsel for

respondent – Anik Industries Limited has drawn out attention to the averments made in the writ petition and letters addressed to the authorities and submitted that the corporate office of respondent No.1 is at Indore; order was placed from Indore; letter of credit was opened by the Indore Branch of IDBI Bank; goods were intended to be brought to Indore; contract became complete on communication of its acceptance at Indore; consignment has already been dispatched from the Chinese Port and the payment of price of the consignment also took place at Indore. He has drawn our attention to the judgment of Three Judges Bench of the Hon'ble Supreme Court in the case of **Union of India v. Oswal Woolen Mills Limited** reported in (1984) 2 SCC 646 wherein the Apex Court has held that the importer Oswal Woolen had its registered office at Ludhiana. It had filed writ petition in Calcutta High Court and sought release of consignment of Beef Tallow which had arrived at Calcutta Port. The Hon'ble Supreme Court held that the petition should not have been filed at Calcutta only on this ground, but rather in the High Court of Punjab & Haryana, or the Delhi High Court, where the respondents are located. He submitted that there is no concealment or deliberate misstatement of any material fact, to doubt the *bona fide* mistake, but instead of “corporate office”, “registered office” has been mentioned in the writ petition, which was a *bona fide* mistake, and therefore, they prayed for amendment in the cause title.

20. On due consideration of the averments made in the writ petition and after hearing learned counsel for the parties and the law laid down by the Apex Court in the case of **Naval Kishore v. Union of India** (supra), we are of the view that part of “cause of action” had arisen within the territorial jurisdiction of Indore Bench of Madhya Pradesh High Court, and therefore, the learned Writ Court rightly heard the writ petition and granted relief in favour of the respondent.

21. In respect of second issue, whether circular dated 07.11.2014 will apply retrospectively or not, the law is well settled. It is not in dispute that the Government of India is empowered to make amendments

with retrospective effect, thereby taking away the rights, which had already accrued in favour of the importers under a scheme. The Government has, otherwise, to amend, modify or withdraw a particular scheme, which gives benefits to a particular category of persons under the said scheme. At the same time, if some vested right had accrued in favour of the beneficiaries of the scheme thereby became entitled, that cannot be snatched from any persons / exporters by making amendments retrospectively.

22. In the case in hand, by issuing circular dated 07.11.2014, which was under challenge in the writ petition, an attempt was made to make a control order applicable to alloy steel deformed bar also. The Apex Court in the case of **Union of India v. Intercontinental** reported in **2008 (226) ELT 16**, has laid down in paragraphs 5 and 6 that by issuing a subsequent circular, the department cannot add a new condition to the parent notification. Any such attempt will be contrary to law, if alloy deformed steel bars are to be included in the relevant control order then it had to be done by amending the schedule to the order itself and not by issuing any departmental clarification.

23. Secondly, no clarificatory circular can be retrospective that is to say it cannot apply to things already done. In the instant case, when sales contract dated 24.06.2014 took place, the clarification dated 07.11.2014 did not exist. Likewise, when pursuant to this contract, the commercial invoice was drawn on 04.09.2014, the clarificatory order did not exist. The fact that the goods in question were conforming to the British Standard is evident from the sales contract where the quality of the goods is mentioned BS4449:2005 500B.

24. Recently, the Apex Court in the case of **Director General of Foreign Trade v. Kanak Exports** reported in **(2016) 2 SCC 226** held paragraph 141 that such notifications cannot have a retrospective operation.

25. It is not in dispute that in the matter of Chennai Customs, before filing the writ petition, deformed steel alloy bars were tested by the

recognized testing laboratory namely National Test House of Chennai Customs and as per the report, goods imported are fully meeting with the Bureau of Indian Standards Certification. Due to the aforesaid reasons, respondent No.1 (original writ petitioner) requested the department to get the goods tested to verify that the goods are BIS specification.

26. As per paragraph 6 of the letter (Annexure P/8) of the Commissioner of Customs, it is clear that in case of doubt, samples be drawn and tested by the particular agency and clearance be allowed on the basis of test report. Due to the aforesaid reason, respondent No.1 also prayed for similar procedure, that samples should be drawn from the product in question and should be tested in the approved laboratory to decide whether the samples meet the BIS specification, so that the spirit of the subsequent clarification order dated 07.11.2014 is fully satisfied. The judgment of the Bombay High Court in the case of **M/s Global Tradex Limited v. Union of India, Writ Petition No.2907/2014**, wherein the validity of the notification was challenged, questions involved in the present matter was dealt with by the Division Bench of the Bombay High Court, and thus, we are of the view that the learned Writ Court has not committed any legal error in granting relief to respondent No.1.

27. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous and amending act may be purely clarificatory to clear an amendment of the provision of the Principle Act, which was also implicit. Clarification amendment of this nature will have retrospective effect, and therefore, if principle act was existing law, when the Constitution came into force, amending act also will be part of the existing law.

28. On applying the aforesaid principles, if we go through the notification / instruction dated 07.11.2014, it cannot be said that the same

is clarificatory and apply retrospectively.

29. For the aforesaid reasons, we allow the application for amendment in the writ petition (**IA No.6418/2015, IA No.6421/2015, IA No.1293/2016 and IA No.2270/2016**) as prayed by respondent No.1 and are of the view that the learned Writ Court has not committed any legal error in entertaining the writ petitions and partly allowing it.

30. In view of the aforesaid, Writ Appeal No.06/2016, Writ Appeal No.496/2015, Writ Appeal No.637/2015 and Writ Appeal No.639/2015 have no merit and the same are dismissed, without any order as to costs. Contempt Appeal No.1/2016 is also disposed of by passing separate order.

(P.K. JAISWAL)
JUDGE

(VIVEK RUSIA)
JUDGE

ss/gp