

(1996) 01 BOM CK 0022

Bombay High Court

Case No: Writ Petition No's. 520 of 1994 with 1814, 1962, 1995 and 2283 of 1993, 299 of 1994 with 326, 348, 515 and 596 of 1994

Amerhsip Management (P) Ltd.
and 9 ors.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: Jan. 17, 1996

Acts Referred:

- Customs Act, 1962 - Section 2(18), 2(22), 2(38), 54, 86(2)

Citation: (1996) 86 ELT 15

Hon'ble Judges: M.B. Shah, J; A.V. Savant, J

Bench: Division Bench

Advocate: Mr. E.P. Bharucha and Mr. K.A. Setalved, instructed by M/s. Mulla and Mulla and Craigie Blunt and Caroe, Mr. E. P. Bharucha, Mr. D.B. Shroof, Mr. Shiraz Rustomjee, Mr. H.C. Daruwalla, Ms. Ruby Kerawalla and Mr. N. B. Kurup, Mr. E.P. Bharucha, Mr. D.B. Shroof, Mr. Shiraz Rustomjee, Mr. H. C. Daruwalla, Ms. Ruby Kerawalla, instructed by M/s. Little and Co., Mr. D.B. Shroof, Mr. Shiraz Rustomjee, Mr. H.C. Daruwalla and Mr. Nitin Vahatkar, instructed by Crawford Bayley and Co, for the Appellant; Mr. J.P. Deodhar, Mr. L.S. Vyas, Mr. K.C. Sidhwa and Ms. Jyoti Vyas, instructed by M/s. Vyas and Bhalwal, for the Respondent

Judgement

M.B. Shah, C.J.

In this group of Writ Petitions, the Petitioner-Companies are, inter alia, engaged in exploration/exploitation of offshore oil, gas and other related activities with the use of oil rigs on behalf of Oil and Natural Gas Corporation Limited (ONGC). In some cases, oil rigs are owned by the Petitioner-Company and in some other cases oil rigs are brought on charter basis. In cases where oil rigs are brought on charter basis, the said oil rigs are having foreign flags flying.

2. The contention in these Petitions is that on the equipments or spare parts of oil rigs which are imported by the ship at Bombay for transshipment at the place of the

oil rigs, the Petitioners are not required to pay Customs duty on two counts, namely, (1) that the goods are imported at the Bombay Port only for transshipment; and (2) that the equipment are "stores" within the meaning of Section 2(38) of the Customs Act and u/s 86(2) of the said Act, without payment of Customs duty it can be permitted to be transferred to oil rigs or u/s 54 it can be transhipped to oil rigs without payment of Customs duty.

3. For determining whether the Petitioners are required to pay the Customs duty on the said goods, the main questions which require consideration are :

(1) Whether the oil rigs are "vessels" for the purpose of the Customs Act, 1962 as defined in Section 2(21) thereof ?

(2) If yes, whether the Petitioners are entitled to get benefit of Section 86(2) of the Customs Act of transferring the "stores" without payment of Customs duty to oil rigs ? and/or

(3) Whether the Petitioners are entitled to get benefit of Section 54 of the Customs Act, 1962, which provides transshipment of goods without payment of duty to any port outside India ?

4. Before deciding the aforesaid questions, it would be necessary to state that u/s 12 of the Customs Act, Customs duty is leviable on goods imported into, or exported from India. However, the goods which enter Indian territory can be classified as (1) goods for home consumption, (2) goods for warehousing, (3) goods in transit, and (4) goods for transshipment. In the case of goods in transit or goods for transshipment, the duty is not required to be paid subject to fulfilling the conditions prescribed by Sections 53, 54, 55 and 56 of the Customs Act. For the purpose of levy of Customs duty, in order to determine whether any imported goods are "goods for home consumption", the primary intended use of the goods is required to be found out when the goods are brought into Indian territorial waters. If the goods are intended to be primarily used in India, they are goods for home consumption notwithstanding that they may also be used for the same or other purposes outside India. The predominant purpose or use of the goods is required to be seen.

5. In this context, we would first refer to the decision rendered by the Supreme Court in [Chowgule and Co. Pvt. Ltd. Vs. Union of India \(UOI\) and Others](#), wherein the Court has discussed exhaustively the various provisions of the Customs Act and the scheme of levy of Customs duty. In paragraph 10 of its judgment, the Court has held as under :-

"10. In regard to the levy of customs duty the scheme of the Act appears to be as follows :-

Goods which are imported into India, that is, goods which are brought into India from a place outside India, are, on entry into India, broadly classified into (i) goods entered for home consumption u/s 46(1)(ii) goods entered for warehousing also u/s

46(1), (iii) goods in transit, and (iv) goods for transshipment. In the case of goods in transit and goods for transshipment, duty is not required to be paid subject to fulfilling the conditions prescribed by Sections 53, 54, 55 and 56. In the case of these goods, there is no need to present a Bill of Entry. Bill of Entry is necessary and has to be presented in the case of goods for home consumption or warehousing : Goods entered for home consumption are required to be cleared on payment of duty. Warehoused goods may be cleared either for home consumption or exportation on payment of import duty or export duty, as the case may be. Goods entered for home consumption are to be subjected to duty at a rate and tariff valuation as on the date of presentation of a Bill of Entry u/s 46 and goods cleared from a warehouse are to be subjected to duty at a rate and tariff valuation as on the date of actual removal from the warehouse. Other goods, presumably goods not disclosed but discovered to be imported or which have otherwise escaped duty, are to be subjected to duty at a rate and tariff valuation as on the date of payment of duty."

6. In the light of the aforesaid decision, for deciding whether "oil rigs" are vessels or not, we would first refer to the contention raised by the Customs Department in their affidavit in reply filed in Writ Petition No. 1814 of 1993. In the said affidavit an extract of the minutes of the meeting of the Customs Collector held on 19th November, 1993 is annexed at Exhibit 3. In the said extract, it has been stated that though the drilling rigs have flight platform, they are not engaged in carriage of goods or passengers but are meant for drilling operations in connection with offshore oil exploration; that these are basically and essentially drilling machines complete with accessories and auxiliary equipment required for drilling operations and a such oil rigs would not qualify as foreign going vessels as defined in Section 2(21) of the Customs Act. In that meeting, it was pointed out that various items like drilling pipes, tools etc., which are exclusive parts of drilling machines cannot be considered as stores of vessels. It is also mentioned that the question of transshipment of these goods as ships stores would not arise. Therefore, the Principal Collector directed that the present practice of allowing transshipment of cargo imported by drilling contractors of ONGC and supplied to oil rigs which do not qualify as vessels or as stores for consumption on board the vessel, be discontinued forthwith and such goods be assessed to duty at a concessional rate of 30% ad valorem under Notification No. 196 of 1989.

January 16, 1996

7. It has been further pointed out in the said affidavit in reply that u/s 86(2) of the Customs Act, any stores imported in a vessel or aircraft may, with the permission of the proper officer, be transferred to any vessel or aircraft as stores for consumption therein, but as the drilling rigs are not vessels, those rigs cannot be treated as foreign-going vessels u/s 2(21) because a vessel is distinct and different from a drilling rig for the following reasons :-

- (i) A vessel is self-propelled and has navigability whereas a rig normally does not have navigability nor self-propelled;
- (ii) A vessel floats in the water always whereas rig floats only when it is being transported from one place to other;
- (iii) A vessel can perform its functions of transportation and carriage only on water whereas a rig can perform its function i.e. drilling on open land as well as land below water;
- (iv) A vessel essentially carries goods or passengers whereas a rig essentially drills;
- (v) A drilling rig is a drilling machine whereas a vessel is not.

8. For appreciating this contention of the Respondents, we would refer to the definition of the words "foreign going vessel or aircraft" given in Section 2(21) of the Customs Act, which is as under :-

"2. Definitions. - In this Act, unless the context otherwise requires, -

(21) "Foreign-going vessel or aircraft" means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes -

- (i) any naval vessel of a Foreign Government taking part in any naval exercise;
- (ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;
- (iii) any vessel or aircraft proceeding to a place outside India for any purposes whatsoever."

The aforesaid definition is an inclusive definition. It, inter alia, provides that any foreign-going vessel is vessel for the time being engaged in the carriage of goods or passengers between any port in India and any port outside India, whether touching any intermediate port in India or not. It also includes any naval vessel of a foreign Government taking part in any naval exercise; any vessel engaged in fishing; any vessel engaged in any other operations outside the territorial waters of India; and any vessel proceeding to a place outside India for any purposes whatsoever. Therefore, apart from vessels which are engaged in carrying goods or passengers, vessels engaged in fishing or any other operations outside the territorial waters of India are included in the definition of the words "foreign-going vessel".

9. The next definition which is important is of the word "goods" given in Section 2(22), which reads as under :-

"(22) "goods" includes -

- (a) vessels, aircraft and vehicles;

- (b) stores;
- (c) baggage;
- (d) currency and negotiable instruments; and
- (e) any other kind of movable property."

In this connection it would be necessary to further refer to the definition of the word "stores" u/s 2(38), which provides that "stores" means "goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting". Therefore, any goods which are to be used in a vessel, including fuel and spare parts and other articles of equipment would be covered by the word "stores".

10. Sections 85 to 90 of the Customs Act deal with "stores". Section 85 provides that "stores may be allowed to be warehoused without assessment to duty". Sections 86 and 87, which are required to be considered in the present case, reads as under :-

"86. Transit and transshipment of stores. -

(i) Any stores imported in a vessel or aircraft may, without payment of duty, remain on board such vessel or aircraft while it is in India.

(ii) Any stores imported in a vessel or aircraft may, with the permission of the proper officer, be transferred to any vessel or aircraft as stores for consumption therein as provided in Section 87 or Section 90.

87. Imported stores may be consumed on board a foreign-going vessel or aircraft. - Any imported stores on board a vessel or aircraft (other than stores to which Section 90 applies) may, without payment of duty, be consumed thereon as stores during the period such vessel or aircraft is a foreign-going vessel or aircraft."

Under sub-section (1) of Section 86, any stores imported in a vessel can remain on board of such vessel while it is in India without payment of duty. Sub-section (2) of Section 86 further provides that any stores imported in a vessel, with the permission of the proper officer, can be transferred to any other vessel for consumption therein as provided in Section 87 or Section 90. In the present case, we are not concerned with Section 90 because the said Section deals with imported stores for the Navy. In view of the aforesaid Sections, "stores" (meaning goods for use in a vessel and includes spare parts and other parts of equipment) can be transferred to any vessel for consumption therein without payment of duty, as provided in Section 87, provided that such vessel is a foreign-going vessel. It is the contention of the Petitioners that they are importing spares and consumables for use on the vessels i.e. oil rigs. Therefore, the main question is whether the oil rigs are vessels or not.

11. For this purpose, the Id. Counsel for the Petitioners vehemently submitted that as the word "vessel" is not defined in the Customs Act, it should be understood in a

commercial sense or in the sense in which people conversant therewith understand it.

12. For understanding the meaning of the word "vessel", we would first refer to the relevant provisions of the Merchant Shipping Act, 1958. Sections 3(13), 3(39), 3(45) and 3(55) of the Merchant Shipping Act, 1958 reads as under :-

"3. In this Act, unless the context otherwise requires, -

(13) "foreign-going ship" means a ship, not being a home-trade ship, employed in trading between any port or place in India and any other port or place or between ports or places, outside India;

(39) "sailing vessel" means any description of vessel provided with sufficient sail area for navigation under sails alone, whether or not fitted with mechanical means of propulsion, and includes a rowing boat or canoe but does not include a pleasure craft;

(45) "ship" does not include a sailing vessel;

(55) "vessel" includes any ship, boat, sailing vessel, or other description of vessel used in navigation."

13. The Respondents in their affidavit in reply have also relied upon the definition of the word "vessel" as per McGraw Hill Dictionary of Scientific and Technical Terms (4th Edition at page 2026, which is as under :-

" "VESSEL" (BOT) A water-conducting tube or duct in the xylem. (ENG.) A container or structural envelope in which materials are processed, treated or stored; for example, pressure vessels, reactor vessels, agitator vessels and storage vessels (tanks). (NAV ARCH) Any craft that can carry people or cargo over the surface of the water."

14. Considering these definitions, it is apparent that for a "vessel" it is not necessary that it should be fitted with mechanical means of propulsion. A vessel also includes a sailing vessel or other description of vessel used in navigation. Same is the definition of the word "vessel" u/s 3(63) of the General Clauses Act, 1897, which provides that "vessel" shall include any ship or boat or any other description of vessel used in navigation. In our view, therefore, the word "vessel" is of a wide amplitude and it includes sailing vessel or other description of vessel used in navigation.

15. For pointing out that oil rigs are considered to be "vessels" by the international community, the Id. Counsel for the Petitioners has pointed out certain certificates, which are produced on record. Firstly he submitted that all the oil rigs are required to carry "International Load Line Certificate". For this purpose he referred to Exhibit A1, which is an International Load Line Certificate (1966) issued by "American Bureau of Shipping" to "Foresight Driller III" belonging to the 1st Petitioner Company in Writ Petition No. 520 of 1994. The Port of Registry of the said ship is

mentioned in the said Certificate as Limassol. It further states that the ship has been surveyed and that the freeboards have been assigned and load lines shown therein have been marked in accordance with the International Convention on Load Lines, 1966. It is submitted by the Petitioners that the said Foresight Driller III is operated by them beyond the territorial waters of India. It is to be noted that in the said Certificate it is mentioned that the freeboard has been assigned as a new ship and the type of the ship is mentioned as Type "B". Similar Certificates of certain other Shipping Bureaus are produced at Exhibits "A-2", "A-3", "A-4" and "A-5" issued in respect of certain other oil rigs.

16. In this context it would be necessary to refer to the provisions of the Merchant Shipping Act, 1958, which make it compulsory for ships to have an international load line certificate. u/s 318 of the said Act, "No Indian ship shall proceed to sea unless there is in force in respect of the ship a load line certificate issued under the provisions of Section 316". Similarly, special provisions are made in this regard in Chapter IX of the said Act. Section 321 provides that "the Central Government may, at the request of a country to which the Load Line Convention applies, issue an international load line certificate in respect of a ship registered or to be registered in that country if it is satisfied in like manner as in the case of an Indian ship that it can properly issue the certificate and where the certificate is issued at such a request, it shall contain a statement that it has been so issued." Section 322 further provides as follows :-

"An international load line certificate or, as the case may be, an international load line exemption certificate issued in respect of any ship other than an Indian ship by the Government of the country to which the ship belongs shall, subject to such rules as the Central Government may make in this behalf, have the same effect in India as a load line certificate or, as the case may be, an international load line exemption certificate issued in respect of an Indian ship under this Part."

17. The International Convention on Load Lines, 1966, to which India is a party, is produced on record. Article 16 of the said Convention provides that an International Load Line Certificate (1966) shall be issued to every ship which has been surveyed and marked in accordance with the present Convention. For this purpose the Id. Counsel relied upon the Notification dated 1st July, 1976 whereby the Central Government has declared that the countries set out therein have accepted or, as the case may be, acceded to the International Convention on Load Lines, 1966, with effect from the dates indicated therein against each country. For India it is mentioned that it has accepted the said Convention on 19th April, 1968. Thereafter, there is further Notification issued by the Central Government in pursuance of sub-section (1A) of Section 9 of the said Act authorising the classification societies specified in the Schedule annexed thereto to be surveyors to carry out survey of ships for the purpose of issue of cargo ship safety construction certificate under sub-section (1) of Section 299(A) of the said Act. The Schedule reads as under :-

- "(1) Lloyds Register of Shipping.
(2) Bureau Veritas.
(3) Det Norske Veritas.
(4) American Bureau of Shipping.
(5) Germanischer Lloyd.
(6) Nippon Kaiji Kyokai (Japan)."

18. Considering the aforesaid Load Line Certificates which are on record, it appears to us that "oil rigs" are considered to be vessels or new ships.

19. Further, Insurance Policy for the oil rigs is issued on that basis. Copy of one of the Insurance Policies is also produced on record which provides for Navigational Limits a under :-

"(a) Offshore India, including Andaman Nicobar and maintenance/repair trips to Aden/Singapore if required in respect of "Essar Explorer" and "Essar Discoverer"."

20. The learned Counsel for the Petitioners further submitted that the International Maritime Organisation has prescribed a Code for the construction of equipment of mobile offshore drilling units. Clause 1.3.1 defines a Mobile Offshore Drilling Unit as a vessel capable of engaging in drilling operations for the exploration or for the exploitation of resources beneath the sea bed such as liquid gas, hydro-carbon, sulphur or salt. Clause 1.3.3 defines a "Self-elevated Unit" as a unit with movable legs capable of raising its hull above the surface of the sea. He, therefore, submitted that oil rigs are "vessels".

21. The Petitioners have also produced on record documents showing that foreign Governments and their Departments which deal with shipping regard oil rigs as vessels. The said documents are produced on record along with the Written Submissions at pages 11, 68, 98 and 100, which says that the barge in question has been surveyed in accordance with the rules of the concerned Bureau of Shipping. Similarly, there is a Certificate which mentions the name of the Foresight Driller III at page 10 of the Written Submissions. Various other Certificates are produced on record which indicate that oil rigs are considered to be ships. In our view, it is not necessary for us to consider all these Certificates, but all these Certificates do indicate that oil rigs are considered to be ships or vessels by all concerned. Further, the Customs Tariff, 1975 provides different heads for levy of Tariff. Chapter 89 provides rate of tariff for "ships, boats and floating structures". Heading 89.05 provides for light-vessels, fire-floats, dredgers, floating cranes and other vessels, the navigability of which is subsidiary to the main functions; floating docks; floating or submersible drilling or production platforms. Entry 8905.20 also provides for floating or submersible drilling or production platforms. This would indicate that oil rigs which are floating structures would be vessels.

From the above discussion it would be apparent that for purposes of the Customs Act, the word "vessel" is of wide amplitude and "oil rigs" are "vessels".

22. For the purpose of levy of or exemption from import duty under the Customs Act, 1962, as the said vessels are stationed beyond the Indian territorial waters, they would be considered as foreign-going vessels engaged in any other operation outside the Indian territorial waters. In this group of Petitions it is not disputed that the Petitioners have imported drilling equipment and spare parts required for oil rigs which are operating in the high seas. It is also an admitted fact that these rigs are either owned or hired by the Petitioners for drilling sea-bed to explore oil pursuant to the respective contracts entered into by and between the petitioners and ONGC.

23. However, it is pointed out on behalf of the Respondents that if the imported "stores" are to be supplied to a foreign-going vessel, then the said imported goods are required to be warehoused without the goods being assessed to duty as contemplated u/s 85 of the Customs Act. Section 85 provides that where any imported goods are entered for warehousing and the importer makes and subscribes to a declaration that the goods are to be supplied as stores to vessels or aircraft, the proper officer may permit the goods to be warehoused without payment of import duty and the goods being assessed to duty. This submission of the Id. Counsel for the Respondents requires to be rejected. For getting benefit of Section 86, the goods are not required to be warehoused. In our view, it is not necessary that before exporting, the stores are required to be warehoused.

24. The Id. Counsel for the Respondents relied upon the decision rendered by a Division Bench of this Court in the case of [Siganporia Bros. Vs. Union of India](#), . In that case, the Court was dealing with Section 61(2) of the Customs Act which provided that where any warehoused goods remain in a warehouse beyond a period of one year, by reason of extension of the aforesaid period or otherwise, interest at such rate as specified in Section 47 shall be payable on the amount of duty on the warehoused goods for the period from the expiry of the period of one year till the date of clearance of the goods from the warehouse. Section 61(2) was held as not ultra vires of fundamental rights. In our view, this judgment has no bearing to the facts of the present case. The Id. Counsel for the Respondents, however, submitted that in that judgment the Court has observed that what Section 85 of the Customs Act prescribes is that an importer will not be liable to pay duty and it confers a discretion upon the Customs Officer to permit the goods to be warehoused without the goods being assessed to duty. The Court further observed that "the foreign exchange is released because the Petitioners import the goods for sale to vessels and thereby earned some additional foreign exchange to the country. The Petitioners are given advantage of exemption from payment of import duty because the goods imported are not released for home consumption but are sold as stores to "the vessels....". In our view, these observations have no relevance to the

facts of the present case.

25. The Id. Counsel for the Respondents further relied upon the decision rendered by a Division Bench of this Court comprising of Bharucha, J. (as he then was) and Kamat, J. (Panaji Bench, Goa) in the case of Salgaonkar Engineers Private Ltd. v. O. J. F. Gomes, 80 Bom. L.R. 127, wherein the Court has considered the words "foreign going vessel". In that case, the question which was examined by the Court was whether transhippers which were carrying mineral ore to be exported from the Port of Marmagaoa could be considered as a foreign going vessel. The transhippers named "Gosalia Prospect" were used for carrying goods from Marmagaoa to vessels anchored mid-stream. In that case also it was contended that spare parts brought for Gosalia Prospect would be exempt from payment of Customs duty. The Court negated the said contention firstly by holding that it was not a foreign going vessel because it was not engaged in carrying goods or passengers between any port in India and any port outside India. The Court also negated the contention that it is not necessary that the vessel must itself carry goods between ports in India and ports outside India by holding that u/s 2(21) of the Act only that vessel which is actually carrying at a given point of time goods or passengers between a port in India and a port outside India is a foreign-going vessel. A plurality of vessels of such carriage is not contemplated by Section 2(21). The ratio of that case also would not be applicable to the present case because equipment which are brought by the Petitioners are to be used by a vessel or an oil rig which is anchored or floating beyond the Indian territorial waters.

26. In this view of the matter, in our view, there is no reason to hold that the Petitioners are not entitled to the benefit of Section 86(2) of the Customs Act which, inter alia, provides that any stores in a vessel may be transferred to any vessel as stores for consumption therein. Petitioners are importing, as contended by them, spare parts or equipments of "oil rigs". As discussed above, "oil rigs" are "vessels" and are entitled to get benefit of Section 86(2).

27. Now we will deal with the alternative submission made by the Id. Counsel on behalf of the Petitioners. It is first submitted that even presuming that oil rigs are not to be regarded as vessels, yet the Petitioners are entitled to get the benefit of Section 54 of the Customs Act. Before dealing with this submission, we would clarify that if the goods are held to be "stores" and that oil rigs are vessels, the provisions of Chapter VIII, which deal with "goods in transit", would not be applicable. However, if it is held that oil rigs are not vessels, then the alternative contention of the Id. Counsel for the Petitioners requires to be considered. He submitted that in the present case, considering the scheme of the Customs Act, Customs duty is leviable on goods which are meant for home consumption. For this purpose he relied upon paragraph 10 of the judgment in Chowgule's case (supra). He submitted that in cases where goods are to be exported from India and are not meant for home consumption, elaborate provisions are made in the Customs Act which give

facilities to the importer for keeping them in warehouse and for further transshipment. For this purpose he relied upon Sections 53, 54 and 69 of the Customs Act.

28. Section 53 of the Customs Act, inter alia, provides that "any goods imported in a vessel or aircraft and mentioned in the import manifest as for transit in the same vessel or aircraft to any port or airport outside India or any customs port or customs airport may be allowed to be so transited without payment of duty". The next relevant Section which requires reference would be sub-sections (1) and (2) of Section 54, which reads as under :-

"54. Transshipment of goods without payment of duty. - (1) Where any goods imported into a customs port or customs airport are intended for transshipment, a bill of transshipment shall be presented to the proper officer in the prescribed form.

(2) Subject to the provision of Section 11, -

(a) Where any goods imported into a customs port are mentioned in the import manifest as for transshipment to any port outside India, or

(b) Where any goods imported into a customs airport are mentioned in the import manifest as for transshipment to any airport outside India.

such goods may be allowed to be transhipped without payment of duty.

(3)"

Sub-section (2) of Section 54 specifically provides that where any goods imported into a customs port are mentioned in the import manifest as for transshipment to any port outside India, such goods may be allowed to be so transhipped without payment of duty. However, the Id. Counsel for the Respondents submit that the aforesaid provisions would not be applicable in the present case because the goods are not imported for transshipment to any port outside India. He emphasizes the word "port" and pointed out that the words used are "to any port outside India" and therefore any platform (oil rigs) which is outside India would not be considered to be a "port" for the purpose of Section 54.

29. As against this, the Id. Counsel for the Petitioners submitted that the term "any port outside India" is not restricted to customs or revenue ports outside India. Any "port", is a generic term, and is a place where vessels load and unload goods and in this sense a rig will be place where a ship or a helicopter loads and unloads goods and the same should be regarded as a "port" for the purpose of Section 54. He further submitted that considering the main object of the Customs Act to levy Customs duty on the goods imported for home consumption, the wider meaning to the word should be adopted.

30. For considering this aspect, we would first refer to the definitions of the words "export" and "import". The word "export" is defined in Section 2(18) of the Customs

Act to mean "taking out of India to a place outside India". Similarly, the word "import" is defined in Section 2(23) to mean "bringing into India from a place outside India". In both these definitions, the phrase used is "bringing from a place outside India" or "taking out of India to a place outside India". It is nowhere mentioned that it should be a Port outside India. The word "India" is defined in Section 2(27) to mean "India includes the territorial waters of India". Reading these definitions together, if the goods are exported out of India to a place outside the Indian territorial waters it would mean "export". So if the goods are brought within the Indian territorial waters from a place which is beyond the territorial waters of India, then it would be an "import". This aspect is also accepted by the Customs Department on the basis of the opinion expressed by the Law Ministry by issuing a clarification by the Central Board of Customs on 27th March, 1995. The question arose with regard to levy of Customs duty on drilling rigs and equipments, their components and spares engaged in offshore business. It was clarified that bringing equipments from a foreign country for drilling oil at sites located within the Exclusive Economic Zone may not constitute "import" within the meaning of the Customs Act and no duties can be levied on such rigs/equipment for rigs if the rigs operate in the zone outside the designated areas and beyond the territorial waters of India. Even sub-section (2) of Section 54 of the Customs Act, 1962 uses two phrases, namely, "customs ports" and "ports outside India". The words "Customs ports" is defined in Section 2(12) to mean "any port appointed under Clause (a) of Section (7) to be a customs port and includes a place appointed under Clause (aa) of that section to be an inland container depot". u/s 7, the Central Government is empowered to appoint, by Notification, ports or airports which alone shall be "customs ports" and "customs airports" for the unloading of imported goods and the loading of export goods or any class of such goods. So the word "port" used in Section 54 of the Customs Act requires to be given a wider meaning to mean a place outside Indian territorial waters.

31. Now we would consider the dictionary meaning of the word "port". Stroud's Judicial Dictionary, Volume 4, gives the following meaning to the word "port" :-

"PORT. (1) "A port is a place, for the lading and unlading of ships or vessels, erected by Charter of the King or a lawful prescription", per Lord Chelmsford, *Foreman v. Free Fishers of Whitstable* L.R. 4 H.L. 266.

(2) A port is a haven and somewhat more -

1. It is a place for arriving and unlading of ships or vessels;

2.

3.

(3)

(4) The word "port", in a charter party or marine policy, is to be understood in its popular, or business, or commercial, sense; it does not in such a document necessarily mean port as defined for revenue or pilotage purposes, *Sailing-Ship "Garston" Co. v. Hickie* 15 Q.B.D. 580 in which case tests for determining the business meaning of "port" were considered; e.g. "port or ports" may be construed "place or places", and so comprise an open roadstead, *Cockey v. Atkinson* 2 B Ald. 460"

The meaning of the word "Port" given in Black's Law Dictionary, Sixth Edition, is as under :

"Port . A place for the loading and unloading of the cargoes of vessels, and the collection of duties or customs upon imports and exports. A place, on the seacoast, great lakes, or on a river, where ships stop for the purpose of loading and unloading cargo, or for purpose of taking on or letting off passengers, from whence they depart, and where they finish their voyage. A port is a place intended for loading or unloading goods, hence includes the natural shelter surrounding water, as also sheltered water produced by artificial jetties, etc. *The Baldhill*, C.C.A.N.Y. 42 F. 2d. 123"

The Id. Counsel for the Petitioners for this purpose relied upon a foreign decision in the case of *The Mowe*, 1914 PD 1, wherein the Court has held that the word "port" must be construed in its usual and limited popular or commercial sense as a place where ships are in the habit of coming for the purpose of loading or unloading, embarking or disembarking. It does not mean the fiscal port.

32. Considering the aforesaid dictionary meaning of the word "port", it would be apparent that "Customs port" or "revenue port" is different from a "port" and that a "port" as a generic term would mean a place for loading and unloading of goods by a vessel.

January 17, 1996

33. Further, the benefit of transshipment of goods was given under the Sea Customs Act, 1878 and it provided transshipment of goods to any place not within the territory of India. The relevant Section 3 of the Sea Customs Act, 1878 defined "Customs-port" and "Foreign port" as follows :-

" "Customs-port".

(d) "Customs-port" means any place declared u/s 11 to be a port for the shipment and landing of goods.

"Foreign port".

(e) "foreign port" means any place not within the territory of India."

For transshipment of goods without payment of duty, similar provision is Section 128 of the Sea Customs Act, 1878 which, inter alia, provided that :

"Customs-Collector may, on application by the owner of any goods imported into such port, and specially and distinctly manifested at the time of importation as for transshipment to some other customs or foreign port, grant leave to tranship the same without payment of the duty (if any) leviable at the port of transshipment, and without any security or bond for the due arrival and entry of the goods at the port of destination."

Considering the aforesaid definition of the word "foreign port" under the Sea Customs Act, 1878, it is apparent that it is a place which is not within the territory of India. Admittedly, in the present case, the oil rigs are not within the territory of India, that is, they are beyond the Indian territorial waters.

34. Further, Section 69 of the Customs Act which, inter alia, provides that any warehoused goods may be exported to a place outside India without payment of import duty if a shipping bill or a bill of export has been presented in respect of such goods in the prescribed form. Relevant part of Section 69 of the Customs Act reads as under :-

"69. Clearance of warehoused goods for exportation. - (1) Any warehoused goods may be exported to a place outside India without payment of import duty if, -

(a) a shipping bill or a bill of export has been presented in respect of such goods in the prescribed form.

(b)

(c)

(2)"

35. This would mean that if the goods are warehoused then the said goods can be exported to a place outside India without payment of import duty if the conditions mentioned in the said Sections are satisfied. In Section 69 the words which are used are not "exporting to a port outside India", but the words used are "to a place outside India". The result is that if the contention of the Respondents is accepted that Section 54 provides for export at a "port" outside India and not to a place outside India then the Petitioners could easily get exemption from Customs duty by warehousing the said goods only for a few hours and thereafter exporting it to a place outside India. This would be an anomalous situation. Hence, the word "port" used in Section 54 is to be interpreted to mean any place outside India. There is no reason why the goods which are warehoused for a few hours should get the benefit of non-payment of import duty and the goods which are being transhipped to a place outside India without being warehoused should not get the same benefit.

36. In view of the aforesaid discussion, even if it is held that oil rigs are not vessels and therefore the equipment brought by the Petitioners for the purpose of the said rigs cannot be considered as "stores", yet the Petitioners are entitled to get the benefit u/s 54 of the Customs Act if the conditions mentioned therein are satisfied.

37. In the result, each of these petitions is allowed. It is declared that "oil rigs" are "vessels" for the purpose of the Customs Act, 1962. Spare parts or equipments for the oil rigs are "stores" and the Petitioners are entitled to get the benefit of Section 86(2) of the Customs Act, 1962. In this view of the matter, the alternative contention raised by the Petitioners would not survive. However, it is declared that if the equipment imported by the Petitioners are not considered as "stores" for the purpose of oil rigs, then the Petitioners are entitled to get the benefit of Section 54 of the Customs Act, 1962. It would be for the Customs authorities to decide each matter on merits depending upon the facts of the case.

38. Rule in each of these petitions is made absolute to the aforesaid extent, with no order as to costs.

39. The Bonds executed and/or the Bank Guarantees furnished by the Petitioners pursuant to the interim orders passed by this Court shall continue for a period of six months from today.

40. Issuance of certified copy of this judgment is expedited.