

**AFR**

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**WRIT PETITION (CIVIL) No.4 OF 2013**

**(An application under Article 226 of the Constitution of India)**

*Great Eastern Shipping Company  
Ltd. and another* .... *Petitioners*

*-versus-*

*Union of India and others* .... *Opp. Parties*

**Appeared in this case:**

*For Petitioners* : Mr. Rohan Shah,  
Senior Advocate  
Mr. S. Mohanty  
Advocate

*For Opposite Parties* : Mr. P.K. Parhi  
Assistant Solicitor General of India

Mr. S.C. Mohanty, Advocate  
for O.P. Nos.3 and 4

**CORAM:  
THE CHIEF JUSTICE  
JUSTICE B.P. ROUTRAY**

**JUDGMENT**  
**27.08.2021**

**Dr. S. Muralidhar, CJ.**

1. The Great Eastern Shipping Company Limited (Petitioner No.1) and its Company Secretary (Petitioner No.2) have filed this writ petition seeking three reliefs. First, for a declaration that condition No.82 of Sl. No.462 of Notification No.12/2012 Cus. dated 17<sup>th</sup>

March, 2012 issued by the Department of Revenue, Ministry of Finance, Government of India to the extent it has made the import of the vessel 'Jag Arnav', retrospectively amenable to customs duty is ultra vires under Sections 12, 25 and 46 of the Customs Act, 1962 ('Act') and Articles 14, 19 (1) (g), 265 and 300A of the Constitution of India. The second prayer is for a direction to the Assistant Commissioner, Central Excise, Customs & Service Tax, Balasore Division, Orissa (Opposite Party No.3) and the Commissioner, Central Excise, Customs & Service Tax, Bhubaneswar-1 (Opposite Party No.4) not to deny Petitioner No.1 permission to convert the vessel 'Jag Arnav' to 'coastal status' and not to charge customs duty. The third is to prohibit Opposite Party No.3 from withholding permission to convert the foreign going vessels of Petitioner No.1 to 'coastal run' and from demanding any customs duty on all of the vessels of Petitioner No.1, including 'Jag Arnav', imported into India prior to 17<sup>th</sup> March, 2012.

### ***Background***

2. Petitioner No.1 is stated to be a private sector shipping service provider involved in transportation of crude oil, petroleum products, gas and dry bulk commodities. It is stated to be a member of the Indian National Ship Owners Association (INSA).

3. Petitioner No.1, on 3<sup>rd</sup> July, 2001 acquired from Panama, a motor ship, 'Jag Arnav'. In terms of Section 406 of the Merchant Shipping Act, 1958 (MS Act), a general licence for 'Jag Arnav' to

undertake worldwide trade and coastal trade in Indian waters was obtained by Petitioner No.1. 'Jag Arnav' arrived at Paradeep Port, Orissa on 30<sup>th</sup> April, 2003 for the first time. At that relevant time the import of a foreign going vessel was exempt from customs duty in terms of Serial No.352 of Notification No.21/2002-Cus, dated 1<sup>st</sup> March, 2002 as amended, read with the relevant tariff heading under the Central Excise Tax. The said Entry 352 read as follows: "Heading 8901: All goods (excluding vessels and other floating structures as are imported for breaking up)."

4. Section 12 of the Act is its charging section. It levies duties on goods imported into India. The rate of duty applicable to imported goods is a function of the prescribed duty rate mentioned in the First Schedule to the Customs Tariff Act, 1975 (CT Act). Classification of goods under the appropriate tariff entry is necessary for determining the applicable rate of customs duty. Under Section 15 the relevant date for determination of the duty payable, in case of goods entered for home consumption under Section 46, is "the date on which a bill of entry in respect of such goods is presented". In the case of other goods (i.e. other than those cleared from a warehouse under Section 68 of the Act) it is the rate prevalent on the "date of payment of duty."

5. Under Section 2 (9) of the Act, the expression 'conveyance' includes a vessel, an aircraft and a vehicle. Under Section 2 (21) the expression 'foreign going vessel' 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 exercises;
- (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 purpose whatsoever.”

6. Section 2 (22) of the Act, the expression “goods” includes “vessels, aircrafts and vehicles”. The expression “import” under Section 22 (23) of the Act “with its grammatical variations and cognate expressions, means bringing into India from a place outside India.” Section 2 (25) of the Act defines the expression “imported goods” to mean “any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption”.

7. In relation to ships, vessels, etc. Chapter 89 of the CT Act is relevant since it deals with the classification of ‘ships, boats and floating structures.’ The Customs Tariff Heading (CTH) 8901 relates to ‘vessels for transport of persons and goods.’ Two broad types of duties are leviable. One is the Basic Customs Duty (BCD) under Section 2 of the CT Act and the other is the Countervailing Duty (CVD), a duty in lieu of Excise Duty levied under Section 3 of the CT Act. Prior to 1<sup>st</sup> March, 2011 BCD in respect of the

import of ships was 'nil' in terms of Serial No.352 of Notification No.21/2002-Cus. The CVD too was nil in terms of prescribed tariff rate for CTH 8901.

8. This position continued till 16<sup>th</sup> March, 2012 as far as BCD is concerned. As far as CVD was concerned, the position of 'nil' duty continued under Clause 129 of the Finance Act, 2012 read with Notification No.6/2006-CE and 38/2011-CE. Therefore, till 16<sup>th</sup> March, 2012 there was no requirement of payment of customs duty on foreign going vessels imported into India.

9. Under Section 46 of the Act, in respect of goods other than goods intended for transit or transshipment, a Bill of Entry (BOE) is required to be filed for clearance of goods for home consumption. Therefore, during the period when 'Jag Arnav' was imported into India by Petitioner No.1 the prevalent practice was for the Customs Authorities not to insist on filing of BOE for clearing of a foreign going vessel. It was also accepted that vessels imported into India would undertake foreign voyages in international waters. While discharging/loading cargo in India or undertaking a coastal run in Indian waters, these vessels entered and exited India without filing a BOE.

10. When an attempt was made by the Central Board of Excise and Customs (CBEC) (Opposite Party No.2) by instruction dated 23<sup>rd</sup> September, 2010 to require BOE to be filed even in cases where a

vessel imported is exempted from payment of duty, a representation was filed by the INSA on 12<sup>th</sup> October, 2011 asking that Indian flag ship owners should file BOE at single customs house specifically designated in respect of vessels falling under CTH 89.01, 89.02, 89.04, 8905.10 and 8905.90 imported prior to 2001 and such BOE should be allowed to be taken on record and processed irrespective of the vessel being physically present in India but had at some point in time been in India waters. INSA further requested that non-filing of BOE hitherto be treated as procedural delay and no penalty be imposed on members of INSA.

11. The Union Budget, 2012 saw the issuance of a fresh Notification No.21/2002-Cus dated 17<sup>th</sup> March, 2012. Specific to foreign going vessels, Serial Nos.461 and 462 of the said notification (corresponding to Serial No.352 of the earlier Notification No.21/2002-Cus), exempted them from both BCD and CVD subject to the conditions 81 and 82 respectively. The relevant extract of the said Notification is read as under:

Sl. No.	Chapter or Heading No. or sub-heading No.	Description of goods	Standard rate	Additional duty rate	Condition No.
461	8901	All goods (excluding vessels and other floating	Nil		81

		structures as are imported for breaking up)			
462	8901	Foreign going vessel	Nil	Nil	82

**Condition 81**-If the vessels and other floating structures are intended to be broken up after their importation, the importer shall present a fresh bill of entry to the Commissioner of Customs, and thereupon such goods shall be chargeable with the duty which would be payable on such goods as if they were entered for home consumption, under section 46 of the Customs Act, 1962 (52 of 1962), on the date of the presentation of such fresh bill of entry, for the purposes of break-up of such goods.

**Condition 82**-If, the importer files a bill of entry under section 46 of the Customs Act, 1962 (No.52 of 1962) at the time of conversion of vessel for coastal run subsequent to import and pays the applicable duty of customs on:

- (a) full lease or contract value, if the import is under a lease agreement or contract;
- (b)  $1/120^{\text{th}}$  of the applicable duty, for each month or part thereof, of stay in India as coastal vessel.

Explanation-For the purpose of this entry.

(1) “Foreign going vessel” shall have the same meaning as assigned to it under clause (21) of Section 2 of the Customs Act, 1962 (No.52 of 1962);

(2) “Conversion to coastal Vessel” shall include the vessel granted a license for coastal trade under

Section 407 of the Merchant Shipping Act, 1958 (44) of 1958) by the Director General Shipping and the vessel granted permission for carrying coastal goods, under the provisions specified in Chapter XII, of the Customs Act, 1962, (No.52 of 1962) by the proper officer of the customs:

(3) “applicable duty” means the Additional duty of Customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975).”

12. As far as “Jag Arnav” is concerned, it had, as already noted, entered the Indian waters and arrived at Paradeep, Orissa on 30<sup>th</sup> April, 2003 and at that time the said imported vessel was fully exempt from payment of BCD and CVD in terms of the Notification No.21/2002-Cus., dated 1<sup>st</sup> March, 2002 (Serial No.352). Consistent with the then prevalent practice, the BOE was not filed by Petitioner No.1 nor asked for by the Customs Authorities. It is stated that “Jag Arnav” continued to operate as a foreign going vessel, carrying and transporting cargo of various kinds and having its discharge or loading ports including those in India. On several occasions between 30<sup>th</sup> April, 2003 and December, 2012 ‘Jag Arnav’ entered Indian waters and left Indian ports after relevant clearances were obtained under Section 42 of the Act from the Customs and Port Authorities. A complete tabulation of all the journeys undertaken by “Jag Arnav” has been placed on record by the Petitioners.

13. On 31<sup>st</sup> December, 2012 Petitioner No.1 filed a letter with the Opposite Party No.3 seeking conversion of “Jag Arnav” from a



foreign going to a coastal run vessel at Dharma Port, Balasore, Orissa. By this time Petitioner No.1 had filed a writ petition in the High Court of Madras to declare Serial No.462 read with condition No.82 of Notification No.12/2012-Cus as illegal and unconstitutional as being violative of Sections 12, 25 and 46 of the Act. An interim order had been passed on 17<sup>th</sup> October, 2012 by the High Court of Madras in the said writ petition directing the Customs Authorities to permit the vessels of Petitioner No.1 to enter the port without insisting on filing of BOE or payment of duty. Opposite Party No.3 was requested to take note of the above order and allow the conversion of the vessel 'Jag Arnav' to 'coastal run'. Since Opposite Party No.3 declined the request, the present writ petition was filed.

***Orders in the present petition***

14. While admitting the writ petition on 4<sup>th</sup> January, 2013 a division Bench of this Court passed the following interim order:

“ Misc. Case No.03 of 2013

Heard Mr. S. Mohanty, learned counsel for the petitioners and Mr. P.K. Ray, learned Standing Counsel for the Revenue.

Perused the impugned notification under Annexure-1, interim orders passed by the High Court of Gujarat as well as the High Court of Madras under Annexures-5 & 6 to the present writ petition. After hearing the learned counsel for both the parties, this Court is of the considered view that the interest of justice would be best served, if a direction is issued to the opposite parties, to permit the entry of the petitioners' vessel i.e. 'Jag Arnav' (which was imported into India on 30<sup>th</sup>

April 2013 by the petitioners-company) into 'Dhamra Port', without insisting on their Bills of Entry and further, the opposite parties shall not insist on payment of Countervailing Duty by the petitioners-company in respect of the aforesaid vessel while entering into Dhamra Port and also while considering the application for conversion of the foreign run vessel, into a coastal run vessel. This Court orders accordingly.

It is further directed that the opposite parties shall not cause any unnecessary hurdles in processing the application of the petitioners-company for reversion of the vessel into foreign vessel as and when such circumstance so arise subject to, the petitioners-company depositing a sum of Rs.5,00,000/- (rupees five lakhs) before the Registry of this Court within a period of one week from today. On such deposit being made, the Registry is directed to keep the same in a short terms fixed deposit yielding interest.

Liberty is granted to the petitioners-company to move necessary application, if any, for other vessels which it propose to bring any port within the State of Odisha for appropriate direction.

The necessary permission/approval may be accorded to the vessels of the petitioners-company by the opposite parties forthwith, without awaiting deposit of the amount as directed hereinabove.

The Misc. Case is disposed of.

Urgent certified copy of this order be granted on proper application in course of the day.

A free copy of this order be handed to the learned Standing Counsel for the Revenue in course of the

day for necessary communication and compliance.”

15. Pursuant to the above direction, Petitioner No.1 deposited a sum of Rs.5,00,000/- (rupees five lakh) which has been kept in a fixed deposit by the Registry of this Court. By the subsequent order dated 7<sup>th</sup> February, 2013 a correction was carried out to the typographical error in the earlier order dated 4<sup>th</sup> January, 2013 passed by the Court where the date of import of ‘Jag Arnav’ typed as 30<sup>th</sup> April, 2013 was corrected as 30<sup>th</sup> April, 2003. Another application Misc. Case No.3245 of 2013 dealt with the application filed by Petitioner No.1 for conversion of another vessel namely ‘Jag Ratan’ for conversion from foreign going vessel to coastal run vessel. It was then directed as under:

“Accordingly, since the petitioners had already deposited a sum of Rs.5,00,000/- pursuant to the aforesaid order, necessary permission/approval may be accorded to their vessel i.e. “MV Jag Ratan” which is proposed to arrive at Paradip Port owned by the petitioner-company forthwith without awaiting deposit of any further amount.

The Misc. Case is allowed in terms of the aforesaid direction.”

16. Thereafter the matter was listed once on 2<sup>nd</sup> April, 2013 when it was adjourned to enable the Opposite Parties to file counter affidavits. The writ petition was listed eight years thereafter on 22<sup>nd</sup> April, 2021 by which time the Opposite Parties had not yet

filed their counter affidavit. It was ultimately filed on 29<sup>th</sup> June, 2021 to which the Petitioner filed a rejoinder on 19<sup>th</sup> July, 2021.

17. This Court has heard the submissions of Mr. Rohan Shah, learned Senior counsel assisted by Mr. S. Mohanty, learned counsel for the Petitioner and Mr. Subash Chandra Mohanty, learned counsel on behalf of Opposite Parties 3 and 4.

***Submissions of counsel***

18. The trigger for the filing of the present petition is the stand of Opposite Parties 3 and 4 that since no BOE was filed with the Customs Authorities when ‘Jag Arnav’ entered India at Paradeep, Orissa on 30th April 2003, Petitioner No.1 is liable to pay customs duty at the time of conversion of ‘Jag Arnav’ from a foreign going vessel to a coastal run vessel. The case of the Opposite Parties, as submitted by Mr. Mohanty, learned counsel appearing for them, is that Petitioner No.1 is eligible to avail exemption from payment of BCD subject to fulfillment of the condition that CVD will be paid at the time of conversion of the foreign going vessel into a ‘coastal run’ vessel. The contention is that every ‘entry’ of such vessel into India from outside India, even after the date of its first arrival in Indian waters, is an import. According to the Opposite Parties, the contention of Petitioner No.1 that the first time when ‘Jag Arnav’ came into India is the point at which customs duty can be levied is not supported by the Act and CBES’s Circular No.16/2012, dated 13<sup>th</sup> June, 2012. The contention is that after the

Notification No.12/2012-Cus dated 17<sup>th</sup> March, 2012 the vessel is deemed to be imported on the date its converted to coastal run though the vessel was imported earlier. Since the law in force when the vessel converted to coastal run was Notification No.12/2012, the said notification applied. Reliance is placed on the decision in ***Jalyan Udyog v. Union of India 1993 (68) ELT 9 (SC)*** in the aforementioned CBSE's Circular No.16/2012-Cus, dated 13<sup>th</sup> June, 2012.

19. Mr. Rohan Shah on behalf of the Petitioners submits that there is a fallacy in the above submission. He refers to the decision in ***State of Madhya Pradesh v. G.S. Flour Mills 1992 (Supp.) 1 SCC 150*** to contend that an exemption Notification No.21/2012 can only have the prospective application. He also relies on the decision of ***Thirumalai Chemicals Ltd. v. Union of India 2011 (268) ELT 296 (SC)*** and submits that unless expressly or necessary implication made retrospective, an exemption notification can only have prospective application. He also refers to the decision dated 11<sup>th</sup> January, 2012 of the Bombay High Court in Writ Petition (L) No.2921 of 2011 (***SEAMEC Limited v. Union of India***) and the decision dated 13<sup>th</sup> February, 2012 of the Bombay High Court in Writ Petition (LOD) No.104 of 2012 (***Great Offshore Limited v. The Commissioner of Customs (Import), Mumbai***) to contend that no customs duty would be leviable at a later stage if the vessel was exempt from payment of customs duty at the time of its first arrival.

20. In support of his plea that customs duty is payable on the importation of goods, reliance is placed by Mr. Shah on the decisions in *Chowgule & Co. Pvt. Ltd. v. Union of India AIR 1987 SC 1176*, *Garden Silk Mills Ltd. v. Union of India 1999 (113) ELT 258 (SC)* and *Union of India v. V.M. Salgaonkar & Bros (P) Ltd. 1998 (9) ELT 3 (SC)*. He also refers to the decision dated 27<sup>th</sup> November, 2019 of the High Court of Telengana and Andhra Pradesh in Writ Petition No.46076 of 2018 (*Great Eastern Shipping Co. v. Deputy Commissioner of Customs*) in support of the proposition that the BOE is presented on the actual date of entry and the customs duty leviable on that date is payable.

### ***Discussion and Reasons***

21. The above submissions have been considered. Since the central plank of the submission of the Opposite Parties to justify the insistence on payment of customs duty on the vessel in question at the time of its conversion from foreign going vessel to coastal run vessel. Notwithstanding that it was imported which was in fact imported way back on 13<sup>th</sup> April, 2003, no customs duty was payable thereon and in support thereof reliance has been placed on the Notification 16/2012-Cus dated 13<sup>th</sup> June, 2012, the Court proposed to legally by examining that circular in some due date. The subject matter of the said circular issued by the CBEC “procedure followed for import of Indian vessels and filing of import general manifest, bill of entry-regarding”.

22. The circular explains in detailed that the context in which it is being issued since the difficulties was brought to the notice of the CBEC by the INSA stating that the customs field formations are insisting on filing of Import General Manifest (IGM) and BOE “even in respect of those vessels that were imported in the past and which were exempt from payment of import duty.” The circular then proceeds to examine the various categories of vessels imported into India. These includes:

“(1) Foreign flag vessels, i.e. vessels that have been registered outside India and which carry imported/exported goods or passengers, during its foreign run (voyage from a port outside India to an Indian port, whether touching any intermediate port in India or not;

(ii) Vessel entering India for the first time on arrival in the country, for registration as Indian Flag vessel;

(iii) Vessels which are intended for conversion from foreign run to coastal run/trade (voyage between two or more Indian ports); and

(iv) Vessels which are brought into India for breaking up.”

23. Specific to the present context paragraph-3.4 of the Circular notes in respect of vessels for conversion to coastal run read as under:

“3.4 Vessels for conversion into coastal run: Any vessel could be used for coastal run/trade after obtaining requisite clearance from Director

General of Shipping and on fulfillment of certain specified conditions under Section 407 of the Merchant Shipping Act, 1958. In case of foreign going vessel, exemption from import duties, including CVD, have been extended vide Serial No.462 of Notification No.12/2012-Cus. Dated 17-3-2012, subject to prescribed conditions, which binds the importer to file fresh Bill of Entry at the time of its conversion for coastal run/trade and payment of applicable duty on such conversion of vessel for coastal run/trade. Similarly, excise duty is also payable on vessels which are being used for coastal trade vide serial No.306 of Notification No.12/2012-Cus. Dated 17-3-2012. Hence, if any Indian Flag vessel which is used for time being as foreign going vessel is converted for use in coastal trade or any vessel which is to be used for coastal trade, there is a need to file a Bill of Entry for payment of applicable duty as CVD.”

24. Clarifications, relevant to the case on hand, have been issued in paragraphs-4, 5 and 6 as under:

“4. In view of the above, it is clarified that in respect of foreign flag vessels, for Indian flag vessels, there is no requirement of filing of IGM and Bill of Entry, since its usage is as conveyance. In respect of Indian flag vessels and vessels for breaking up as explained in para 3.3 and 3.5 above, the importer has to file IGM and Bill of Entry, under the provisions of the Customs Act, 1962. As regards the vessel for conversion into coastal run/trade as detailed in para 3.4, since the changes in the duty structure for levy of CVD on vessels which are being converted for coastal trade was initially imposed from 1-3-2011, and subsequently retrospective exemption has been provided for the period 1-3-2011 to 16-3-2011 vide clause 129 of the Finance Act, 2012, the requirement for filing



IGM and Bill of Entry may be insisted in all such cases w.e.f. 17-3-2012, that is the date from which levy of CVD has come into force.

5. It is also clarified that all vessels including foreign going vessels for its entry into/exit from the country during its journey as foreign going vessel and the Indian flag vessel/Indian Ship for subsequent use as foreign going vessel would not require filing of IGM and Bill of Entry as conveyance, since the same are not imported goods to be cleared for home consumption.

6. Accordingly, the field formations may adjudicate the cases involving any violation where the IGM or Bill of Entry in respect of vessels were not filed at the time of import, on its first arrival in India or on its conversion into coastal trade and appropriate penal action be taken against the offenders.”

25. A careful reading of the above circular reveals that it does not support the contention of Opposite Parties that in the present case where the vessel ‘Jag Arnav’ has been imported into India way back on 30<sup>th</sup> April, 2003, the Opposite Parties can insist on collection of CVD at the time of its conversion from a foreign going vessel into a coastal run vessel.

26. This contention also overlooks the settled legal position, which the circular in fact makes abundantly clear, that Notification No.21/2012 dated 17<sup>th</sup> March, 2012 was not intended to operate retrospectively. In other words, it was not intended to apply to a vessel already been imported into India long before the date of said exemption notification.

27. The decisions of the Bombay High Court in *Great Offshore Limited v. Commissioner of Customs (Import)* and *SEAMEC Ltd. v. Union of India (supra)* also make this position clear. Both the decisions hold that where the vessels had been imported long before the notification that was sought to be applied in those cases, and particularly at a time when there was no requirement to file a BOE, the Opposite Parties could not insist on levy of customs duty at a later stage.

28. Turning to the Entries 461 and 462 and the corresponding Conditions 81 and 82, it requires to be noted that Condition 81 applies when a imported ship is subsequently broken up and sold. In such event the date of import is by a deeming fiction postponed to the date of breaking up of the ship. In any event, in the present case Condition 81 does not apply since here there was no question of the ship 'Jag Arnav' being broken up at any stage.

29. Interestingly it is not in dispute that the 'Jag Arnav' has, after its import into India, undertaken several journeys both to ports out outside India as also those within India. It is only after the impugned notification that permission for conversion into a coastal run vessel was sought by the Petitioner. However, that by itself would not attract the liability to pay customs duty on the entire value of the vessel since the import took place much earlier on 30<sup>th</sup>

April, 2003 at which point in time it was fully exempted from payment of any customs duty.

30. Mr. Shah has rightly his contention that a distinction has to be made between levy and customs duty on the value of ship stores that is carried on the vessel and are by themselves 'goods'. He points out how Petitioner No.1 has in fact paid customs duty on the value of ship stores without delay.

31. To complete the factual narration, after the interim order of this Court dated 11<sup>th</sup> January, 2013 a provisional BOE was filed by Petitioner No.1 on 15<sup>th</sup> January, 2013 and it was provisionally assessed on 10<sup>th</sup> February, 2013. 'Jag Arnav' re-converted to foreign status at Mundra on 1<sup>st</sup> February, 2013 and to coastal run status at Paradeep on 10<sup>th</sup> February, 2013. Provisional BOE was filed on 15<sup>th</sup> February, 2013 and provisional assessment took place. On 9<sup>th</sup> March, 2013 it reconverted to foreign status at Mundra.

32. Mr. Shah points out how 'Jag Arnav' was in foreign status at the time of import and thereafter for nearly ten years. It converted to coastal run status for the first time at Dhamra on 6<sup>th</sup> January, 2013. It had called on Indian ports on various occasions in 2003, 2008 and 2009.

33. A similar list of dates have been filed for the two other vessels, i.e., 'Jag Ratan' and 'Jag Rani' both of which arrived at Indian port,

i.e., Paradeep for the first time on 13<sup>th</sup> November, 2007 and 26<sup>th</sup> August, 2011 respectively. Both these vessels have been converted several times from coastal run status to foreign going status depending on the journeys undertaken. On 2<sup>nd</sup> March, 2013, 'Jag Ratan' reverted to foreign status at Dhamra and 'Jag Rani' on 7<sup>th</sup> January, 2013.

34. It requires to be noted at this stage that Petitioner No.1 has filed writ petitions both in High Courts of Gujarat and Madras for similar reliefs. In the decision of the High Court of Andhra Pradesh and Telengana ***Great Eastern Shipping Company v. Deputy Commssioner*** (supra), one of the questions that was addressed the next question is as to whether the customs authorities are entitled to assess the imported vessel to duty, on the premise that the bill of entry is filed in the year 2018, and also collect duties and tax prevalent in 2018 despite the fact that the vessel was admittedly imported into the Indian waters on 28<sup>th</sup> May, 2012 more particularly when the customs duty applicable at that point of time was 'nil'.

35. After discussing the applicable law and particular the decisions in ***SEAMEC Limited*** (supra), the conclusion reads as under:

“In our considered view, whether the bill of entry has been presented before the date of entry or after the date of entry, the bill of entry shall be deemed to have been presented on the date of actual entry inwards and the said date of entry shall be

reckoned as the relevant date for application of the law prevalent as on that date.

.....

To sum up, we are of the view that the law prevalent as on the date of the import of the vessel in the case on hand would only be applicable and that merely because the bill of entry was not filed at the inception in the year 2012 and the manual bill of entry was filed in the year 2018, that is, about six years after the actual import of goods, the duty and tax cannot be levied based on the law prevalent on the date of the filing of manual bill of entry more particularly as the import of the vessel in May, 2012, is not in dispute and as the vessel ran after getting necessary port clearances on number of occasions is also not in dispute. As admittedly the duties were 'nil' at the time of import in May, 2012, and the integrated tax in terms of Section 3(7) of Customs Tariff Act, 1975 was introduced w.e.f. from 01.07.2017, we hold that the petitioner is entitled to the reliefs claimed in the writ petition."

36. This Court respectfully concurs the above view and holds that in the present case since vessel 'Jag Arnav' called in Indian port for the first time at Paradeep on 30<sup>th</sup> April, 2003, and at that relevant date it was exempt from payment of customs duty it cannot be made amenable to such duty nine years later by virtue of a condition in another exemption notification of March 2012.

37. One of the contentions of the Opposite Parties is that after the Notification dated 17<sup>th</sup> March 2012 was issued, customs duty is leviable on every occasion when the vessels in question entered India as a 'conveyance' carrying cargo. In relation to Indian flagged

vessels, as the three in question in this case, at the time of their first entry into Indian waters they are considered as imported 'goods'. Thereafter every time they re-enter these vessels conduct their activity as 'conveyance' as defined under Section 2 (9) of the Act. Such conveyances are not re-imported into India every time they enter Indian waters since they were never 'exported' from India. Section 20 of the Act would, therefore, have no applicability. Only their cargo would be amenable to customs duty, if at all. This position has been explained in *Commissioner of Customs, Mumbai v. Aban Loyd Chiles Offshore Ltd. (2017) 3 SCC 211* as under:

“13. To appreciate the controversy, it is necessary to understand certain concepts as envisaged under the Act. 'Goods' for the purpose of the Act includes vessels, aircrafts and vehicles as defined in sub-section (22) to Section 2, yet the distinction has to be recognized between a vessel or an aircraft as a mere good and when the vessel or an aircraft comes to India as a conveyance carrying imported goods. When a vessel or an aircraft is imported into India as a good, customs duty is payable thereon. However, when a vessel is used as a conveyance of an imported good, the position would be different.

38. It has already been noticed how Circular No.16/2012 dated 13<sup>th</sup> June, 2012 does not support the case of the Opposite Parties. They have also relied on the decision of *Jalyan Udyog v. Union of India (supra)*. That decision is not applicable to the present case as it seeks to interpret Entry No.461 read with Condition 81, which is not relevant in the facts and circumstances of the present case. On the other hand, the language of Condition 82 makes it clear that it is

meant to apply to vessels imported after the date of the notification and not prior thereto.

39. Lastly the submission of Mr. Shah that an exemption of notification cannot create a levy outside the charging section finds full support from the decision of the High Court of Gujarat dated 15<sup>th</sup> July, 2015 in Special Civil Application No.3142 of 2010 (*Adani Power Limited v. Union of India*). This was affirmed by the Supreme Court of India by the dismissal of SLP (Civil) No.30868 of 2015 of Union of India against the said decision, on 28<sup>th</sup> November, 2015.

40. For the aforementioned reasons, this Court concludes that in the present case exemption notification dated 17<sup>th</sup> March, 2012 is only prospective in its application and that in respect of the import of the three vessels i.e. 'Jag Arnav', 'Jag Ratan' and 'Jag Rani' which were imported into India first on 30<sup>th</sup> April 2003, 13<sup>th</sup> November, 2007 and 26<sup>th</sup> August, 2011 respectively, Entry 462 read with Condition No.82 of the notification dated 17<sup>th</sup> March, 2012 will not apply.

41. As a result, it is not necessary for this Court to strike down the said entry or condition of the notification. It is held that the Opposite Parties would not be justified in insisting on payment of CVD by Petitioner No.1 for grant of conversion of the vessels from foreign

going to coastal run since the vessels stand imported prior to the notification dated 17<sup>th</sup> March, 2012.

42. In that view of the matter, the sum of Rs.5,00,000/- (rupees lakh) deposited by Petitioner to this Court together with the interest accrued thereon will be released in favour of Petitioner No.1 by the Registry within four weeks.

43. The writ petition is allowed in the above terms. But in the circumstances, with no order as to costs.

***(Dr. S. Muralidhar)***  
***Chief Justice***

***(B.P. Routray)***  
***Judge***

*KC Bisoi*