

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 12691 OF 2019**

Jotun India Private Limited, a company  
incorporated under the Companies Act, 1956  
and having its registered office at  
Falcrum, A-Wing, 601 (II)/ 602,  
Next to Hayatt Regency, Sahar Road,  
Andheri (E), Mumbai 400 009.

... Petitioner.

V/s.

1. The Union of India through the Secretary  
of Finance, Department of Revenue,  
North Block, New Delhi- 110 001.
2. The State of Maharashtra  
through the Government Pleader,  
High Court, Mumbai.
3. The Maharashtra Authority for Advance  
Ruling for Goods and Services Tax  
having its office at 8<sup>th</sup> Floor, H-Wing,  
GST Bhavan, Mazgaon, Mumbai 400 010.
4. The Maharashtra Appellate Authority for  
Advance Ruling for Goods and Services  
Tax having its office at 15 Floor,  
Air India Building, Nariman Point,  
Mumbai- 400 021.

... Respondents.

Mr.D.B.Shroff, Senior Advocate with Mr.Prasad Paranjape,  
Mr.Kumar Harshvardhan and Ms.Bhavna Verma i/b.  
Luminere Law Partners for the Petitioner.

Ms.Shruti Vyas, 'B' Panel Counsel for Respondent Nos.2 to 4.

**CORAM :**            **NITIN JAMDAR AND  
GAURI GODSE, JJ.**

**DATE :**            **22 December 2022.**

**JUDGMENT :**    (Nitin Jamdar, J.)

The Petitioner manufactures and supplies marine paint used on the hull of the ships. These goods are classified under a Schedule which lists them along with Paints. The Petitioner applied for an advance ruling that marine paints supplied by the Petitioner should be considered as part of the ship/vessel and should be classified accordingly. Both, the Advance Ruling Authority and the Appellate Authority have rejected the interpretation of the Petitioner. They have held that the marine paint supplied by the Petitioner cannot be classified as part of the ship. Hence the Petitioner is before us in this writ petition challenging these orders.

2.            The Petitioner is a supplier and manufacturer of paints and powder coatings. One of the major supplies of the Petitioner is marine paints, and the marine paints manufactured by the Petitioner are used on vessels as anti-fouling paints.

3. Notification No.1/2017, dated 28 June 2017, prescribes applicable rates of CGST. The rules of interpretation of the First Schedule to Customs Tariff Act, 1975 are applicable for the classification of the GST regime. Relevant entries for the present petition are as follows:

<i>Sr.No.</i>	<i>Chapter/ Sub-heading/ item</i>	<i>Heading/ Tariff</i>	<i>Description of Goods</i>
20.	3208		<i>Paints. and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in 2 non-aqueous medium; Solutions as defined in Note 4 to this Chapter.</i>

X X X X

<i>Sr.No.</i>	<i>Chapter/ Sub-heading/ item</i>	<i>Heading/ Tariff</i>	<i>Description of Goods</i>
252	Any chapter		<i>Parts of goods of heading 8901, 8902, 8904, 8905, 8906 and 8907.</i>

X X X X

<i>Sr.No.</i>	<i>Chapter/ Sub-heading/ item</i>	<i>Heading/ Tariff</i>	<i>Description of Goods</i>
246	8901		<i>Cruise ships, excursion boats, ferry-boats, cargo ships, barges and similar vessels for the transport of persons or goods</i>

247	8902	<i>Fishing vessels; factory ships and other vessels for processing or preserving fishery products</i>
248	8904	<i>Tugs and pusher craft</i>
249	8905	<i>Light-vessels, fire-floats, dredgers, floating cranes and other vessels the navigability of which is subsidiary to their main function; floating docks; floating or submersible drilling or production platforms</i>
250	8906	<i>Other vessels, including warships and lifeboats other – than rowing boats</i>
251	8907	<i>Other floating structures (for example, rafts, tanks, coffer-dams, landing-stages, buoys and beacons)</i>

X      X      X      X

Thus, paints are classified under Tariff Item No.2308 which is taxed at 18% CGST. Parts of the goods under headings 8901, 8902, 8904, 8905, 8906 and 8907 would be taxed at the rate of 5% of GST. For the sake of convenience, the case of the Petitioner is referred to as "part of the ship". The paints supplied by the Petitioner are classifiable under Chapter heading 3208 and 3209 which are covered under Schedule IV of the said Notification and liable to GST @ 28%. However, under the same rate notification, Schedule-| which covers goods taxable @ 2.5% CGST has entry No.252 which covers parts (classifiable under any chapter) of goods, falling under headings 8901, 8902, 8904, 8905, 8906 and 8907. The Petitioner

contends that the marine paints part of the ships and therefore would be covered at Sr.No.252 Schedule-I of Notification No.1 of 2017, dated 28 June 2017.

4. The Petitioner filed an application on 19 February 2018 under section 97 of the Central Goods and Services Tax Act, 2017 (CGST Act) and the Maharashtra Goods and Services Tax Act, 2017 (MGST Act) seeking an advance ruling. The Petitioner, in particular, sought a ruling on the question as to whether marine paints supplied by the Petitioner would be considered to be 'part' of the ship and accordingly be classified under Sl. No.252 of Schedule-I of Notification No.1/2017 of Central Tax (Rates) dated 28 June 2017. In the application, the Petitioner contended that under the erstwhile regime of Maharashtra Value Added Tax, the marine paints were classified under Schedule-E-1. Under the excise regime, the said goods were classified under Chapter 32 and were taxed at the rate of 12%. The marine paints/ anti-fouling paints are part of the ship due to their special functionality to protect marine vessels and other carriers above and below the waterline. The Petitioner stated that anti-fouling paints are statutorily mandated for application on ships to make them sail-worthy under the Merchant Shipping Act, 1958 and that makes it an essential part of the ship. Any product without which the main product is not workable is to be considered as the main product, and, therefore, the marine paints will have to be construed as an essential part of the ship.

5. The Maharashtra Authority of Advance Ruling on Goods and Service Tax- Respondent No.3 (Authority) rejected the contentions of the Petitioner, holding that merely because anti-fouling paints are mandatory in the Merchant Shipping Act, that does not make it a part of the ship. Accordingly, the Authority disposed of the application dated 19 May 2018. The Petitioner thereafter filed an appeal under section 18 of the CGST and MGST Act to the Maharashtra Appellate Authority for Advance Ruling for Goods and Service Tax- Respondent No.4 ("Appellate Authority"). The Appellate Authority gave a personal hearing to the Petitioner. After considering the entries and the material on record, the Appellate Authority held that there was no error in the order passed by the Authority. The Appellate Authority held that the marine paint is a standalone commodity with independent existence perceived as an independent product rather than a part of the ship and that the marine paint/ anti-fouling paint is not an integral part of the ship. The Appellate Authority observed that the ship could sail without an anti-fouling paint, which only adds comfort and durability to the ship and is not an indispensable part of it. The precedents cited by the Petitioner were distinguished and held to be not applicable. The Appellate Authority dismissed the appeal by the impugned order dated 5 February 2019. Thereafter the present petition is filed. By order dated 28 November 2022, the petition was listed for disposal.

6. We have heard Mr. D.B. Shroff, learned Senior Advocate for the Petitioner and Ms. Shruti Vyas, learned Panel Counsel for Respondent Nos.2 to 4.

7. The learned counsel for the Petitioner submitted, in short as follows: There is a fundamental error committed by both the Authorities in holding that the marine paint (anti-fouling paint) manufactured by the Petitioner is not a part of the ship. The purpose for which the anti-fouling paint is required would clearly show that it is an essential part of the ship. It is mandatory that the anti-fouling paint is to be applied to the ship without which the ship cannot sail. Section 356R of the Merchant Shipping Act read with section 356P(1) mandates that all vessels must comply with the requirements of the anti-fouling system. The anti-fouling system includes paint used on the ship to control or prevent the attachment of unwanted organisms. The Director General of Shipping can detain a ship and levy a penalty if the anti-fouling system is not complied with as per the provision of section 356-X of the Merchant Shipping Act. It is also necessary for a ship to have anti-fouling paint to prevent marine life as algae and barnacles, from attaching themselves to the ship's hull. Even a small amount of fouling in the hull of the ship can lead to an increase in fuel consumption. Anti-fouling measures are also important for protecting marine ecology as ships that sail in different oceans can carry organisms attached to them to another ocean. The Technical EIA Guidance Manual for Ship Breaking Yards published by the Ministry of Environment and

Forests in August 2010 treats the lead-based anti-fouling coatings as part of the ship's structure. Prudent owners will only sail the ship with anti-fouling paint. The anti-fouling paint is essential to make the ship usable apart from its application, making sailing legal; therefore, the anti-fouling paint must be considered part of the ship. Both the Authorities are in complete error in stating that the ship can enter the water without anti-fouling paint, overlooking that it cannot sail as per the governing legal position. If such activity is carried out, then the owner is liable to a fine and confiscation of the ship. Both the Authorities wrongly overlooked these mandatory requirements. Also, the anti-fouling paint enhances the life of the ship, and it is an anti-corrosion measure. The material published by the International Maritime Organization has emphasized the importance of the anti-fouling system and how it is necessary for the ship's functioning. The learned counsel for the Petitioner relied upon the decision in the case of *Collector of Central Excise v. Jay Engg. Work Ltd.*<sup>1</sup>; *H.M.M. Ltd. v. Collector of Central Excise*<sup>2</sup>; *Commissioner of Central Excise v. Insulation Electrical Private Limited*<sup>3</sup>; and *Day v. Harland and Wolff Ltd.*<sup>4</sup>. The learned counsel for the Petitioner submitted that both the Authorities have ignored the law laid down in these decisions which would demonstrate that anti-fouling paint is part of the ship and, therefore, need to be taxed accordingly. It is submitted that since both the Authorities have erred in applying the well-

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1 1989 (39) ELT 169 (SC)

2 1994 (74) ELT 19 (SC)

3 (2008) 12 SCC 45

4 1952 D. No. 1210



settled test and have come to the finding based on surmises and presumption, interference in writ jurisdiction with the impugned orders is necessary.

8. Mr. Shruti Vyas, learned counsel for the State submitted as follows: The scope of writ jurisdiction against the order passed by the Authority and the Appellate Authority is extremely and the merits of the findings cannot be considered in writ jurisdiction. The decision of the Division Bench of this Court in the case of *JSW Energy Limited v. Union of India*<sup>5</sup> has held that no appeal is provided against the order passed by the Advance Ruling Authority. If there is an absence of an appeal, that does not mean that powers of the writ court are enlarged to substitute the appellate remedy. The principles of natural justice were followed in this case where the Petitioner was given the full opportunity, and the Authority and the Appellate Authority have taken a particular view of the matter, which is *inter partes* binding upon the Petitioner. Hon'ble Supreme Court, in the case of *Appropriate Authority and another v. Sudha Patil*<sup>6</sup> has laid down that sufficiency or adequacy of material is not open to judicial review, and if two views are possible, the writ court will not interfere. Without prejudice, under the Merchant Shipping Act, wherein the anti-fouling system has been defined, the paint is one of the components of the system, and paint alone is not the anti-fouling system. Sections 356-R, 356-S, and 356-B of the Merchant Shipping

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<sup>5</sup> 2019 (27) GSTL 198 (Bom.)

<sup>6</sup> (1998) 8 SCC 237

Act refer to the anti-fouling system, which includes the paint. The question framed for consideration of the Authority is only relating to paint and not about the anti-fouling system. Both the Authorities, having considered the material on record and after giving a full opportunity of hearing to the Petitioner, have taken a view which is *inter partes* binding. There is no need to interfere with the impugned orders on merits, and the Petitioner cannot convert this proceeding to an appellate proceeding.

9. First and vital aspect of the matter is the scope of writ jurisdiction against the order passed by the Authority and Appellate Authority.

10. Chapter XVII of the Central Goods and Services Tax Act, 2017, deals with Advance Ruling. This Chapter is separate from Chapter XVIII which deals with Appeal and Revision. Section 96 provides for the constitution of the Authority for Advance Ruling. Provision for application for advance ruling is specified under section 97 stating that an applicant desirous of obtaining advance ruling may apply in such form and manner as prescribed stating the question on which the advance ruling is sought. The question on which advance ruling can be sought has to be in respect of the classification of goods and services, applicability of Notification, determination of time and value of supply, admissibility of the input tax credit, determination of liability to pay tax, whether

the applicant is required to be registered and whether any particular thing done by the applicant amounts to the supply of goods and services. Upon receipt of such application under section 98, the Authority gives a hearing to the applicant and the concerned officer and either admits or rejects the application. The Authority will not admit the application where the question raised is already pending or decided in the applicant's case under any provisions of the Act. When the application is admitted, the Authority, after examining further material and giving an opportunity to be heard to the applicant and the concerned officer, pronounces its advance ruling. An Appellate Authority for Advance Ruling is constituted under section 99 of the Act and the appeal is provided to the Appellate Authority from the order passed by the original Authority. Section 103 is important. It reads thus:

***“103. Applicability of advance ruling.***

*(1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only--*

- (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;*
- (b) on the concerned officer or the jurisdictional officer in respect of the applicant.*

*(1A) The advance ruling pronounced by the National Appellate Authority under this Chapter shall be binding on—*

- (a) the applicants, being distinct persons, who had sought the ruling under sub-section (1) of section 101B and all registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961;*
- (b) the concerned officers and the jurisdictional officers in*

*respect of the applicants referred to in clause (a) and the registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961.*

*(2) The advance ruling referred to in sub-section (1) and sub-section (1A) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.”*

Thus, the advance ruling pronounced by the Authority and the Appellate Authority shall be binding only on the Applicant who has sought it for any matter under section 97(2) for advance ruling and the concerned officer or the jurisdiction officer in respect of the applicant. Section 104 lays down that where the applicant or the appellant obtains the advance ruling pronounced by the Authority or the Appellate Authority by fraud or suppression of material facts and misrepresentation of facts; the Authority may declare such rule to be *void ab initio*. Therefore, the legislative scheme indicates that the advance ruling is distinct from the appeal and revision. The order is binding only on those specified under section 103 of the Act. This, in short, is the scheme of advance ruling under the Act.

11. Under the above scheme, it is the applicant who seeks an advance ruling on the matter as specified, which is not pending or decided in the applicant's case and the decision so given after hearing the applicant and the concerned officer is binding on the applicant or the concerned jurisdictional officer. Therefore, no further appeal is provided. This legislative scheme has to be kept in mind when the

applicant challenges the order passed by the Authorities invoking writ jurisdiction. The Court will have to be mindful of the fact that the advance ruling is binding in a limited sense. Our enquiry is whether the orders passed by both the Advance Ruling Authorities, which have limited application, need any interference in writ jurisdiction in this petition filed by the Petitioner, who has sought the advance ruling.

12. The Division Bench of this Court, in the case of *JSW Energy Ltd.* considered the scope of challenge to orders passed by the Appellate Advance Ruling Authority invoking writ jurisdiction. In this case, the Petitioner had submitted that since no appeal was provided against the Appellate Authority's order, the Court should examine the impugned order on the basis of substantive merits. It was contended that the Authority had exceeded jurisdiction in introducing and relying on new grounds never raised before the Authority. This, according to the Petitioner therein, had amounted violation of the principles of natural justice. The Division Bench observed that merely because the appeal is not provided, the writ Court cannot assume appellate jurisdiction and examine the challenge on merits. In the case of *Sudha Patil*, the Hon'ble Supreme Court observed that Writ Court is not expected to exercise the power of judicial review as if the appellate court, and in the absence of an appeal, it does not in any manner enlarge the power of judicial review.

13. The learned Senior Advocate for the Petitioner sought to contend that the decision in the case of *JSW Energy Limited* is not good law as it is in ignorance of the decision of the Hon'ble Supreme Court in the case of *Union of India v. Asahi India Safety Glass Ltd.*<sup>7</sup> He submitted that if the wrong principle is applied, then the jurisdiction of the High Court under Article 226 is not ousted. The learned counsel for the Petitioner also relied upon the decision of the Hon'ble Supreme Court in the case of *Columbia Sportswear Company v. Director of Income Tax, Bangalore*<sup>8</sup> wherein it was held that the judicial review of the decision of the Advance Ruling Authority is maintainable.

14. The decision in the case of *Asahi India Safety Glass Ltd.* arose from the order passed by the Settlement Commission under the Central Excise Act. In this case, show-cause-notices were issued by the Department to Asahi India in respect of defective modvat credit of inputs. Asahi India approached the Settlement Commission. In the settlement application, Asahi India admitted to the extent that it had received the goods in package form, and upon opening, certain pieces were found to be broken, and they were not used as inputs which Asahi India agreed to pay back. The Settlement Commission went into the issue and directed Asahi India to pay back the balance amount towards settlement. Asahi India filed a writ petition in the High Court which remanded the proceeding to the Settlement

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<sup>7</sup> 2017 (50) STR 122 (SC)

<sup>8</sup> (2012) 11 SCC 224

Commission for consideration afresh in the light of the legal principles. This order was challenged by the Department on the ground that the High Court had no jurisdiction to tinker with the order of the Settlement Commission, stating that once such an order was passed, the High Court had no jurisdiction to interfere with the same. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of *Union of India v. Swift Laboratories Ltd.*<sup>9</sup> The Hon'ble Supreme Court found the High Court had not meddled with the factual aspects and had concluded that the Commission committed an error by applying the wrong principle of law; therefore, the Hon'ble Supreme Court did not interfere with the order passed by the High Court. In the decision in the case of *Asahi India*, a proposition is not laid down that the scope of writ jurisdiction against the Advance Ruling Authority is akin to challenge as if it is an ordinary tribunal on all available grounds.

15. The next decision cited by the Petitioner is the case of *Columbia Sportswear Company*. In this case, the issue arose from the order passed by the Advance Ruling Authority under the Income Tax Act, 1961. The Advance Ruling Authority, after hearing the Petitioner therein and the Department, passed an order which was challenged before the Hon'ble Supreme Court in Special Leave Petition. The Hon'ble Supreme Court posed a question as to whether the advance ruling pronounced by the Authority can be challenged under Article 226 or 227 before the High Court or under

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9 2011 (4) SCC 635: 1011 (265) ELT 3 (SC)

Article 136 of the Constitution of India before the Supreme Court. The Hon'ble Supreme Court observed that the Authority for Advance Ruling, being a tribunal writ under Articles 226 or 227, is maintainable before the High Court. Accordingly, the Special Leave Petition was disposed of by granting liberty to the Petitioner therein to move the High Court. The decision in the case of *Columbia Sportswear Company*, does not assist the Petitioner. The Respondents do not dispute that the writ petition against the Appellate Authority's order is maintainable in the High Court. The issue raised by them is the grounds on which the order can be set aside. Therefore, we will have to examine the challenge of the Petitioner in a very limited compass.

16. It is the Petitioner who had approached Authority with a question that it framed in its application. The Petitioner filed Form GST ARA-01 under Rule 98 of the Central Goods and Service Rules, 2017. It specifies the description as a supply of paints and coatings specially designed for unique conditions. The question on which ruling was sought is:

*“Whether marine paints supplied by the applicant, would be considered to be part of ship ad accordingly be then classified under Sl.no.252 of Schedule-I of Notification No.1/2017 of Central Tax (Rates) dated 28 June, 2017?”*

Thereafter the Petitioner filed a statement of facts. The case was taken up for a preliminary hearing on 28 March 2018. The jurisdictional officer filed a written statement objecting to the



admission of the application contending that where there is a specific entry for the commodity, it cannot be classified differently. The application was admitted. An advocate appeared for the Petitioner and made oral and written submissions. Thereafter the Authority passed an order on 15 May 2018. The Petitioner filed an appeal wherein the Petitioner submitted the grounds of appeal. A personal hearing was conducted on 16 January 2019 when the advocate appeared for the Petitioner and also submitted written submissions. The representative of the Revenue also made submissions. Thereafter by a detailed order, the Appellate Authority dismissed the appeal.

17. Therefore, the Authority and the Appellate Authority followed the entire procedure, and full opportunity was given to the Petitioner. There is no ground raised of breach of principles of natural justice on account of not giving an opportunity of being heard. All points put forth by the Petitioner as to why anti-fouling paint should be considered as part of the ship were taken into consideration, and the Authority and the Appellate Authority took a particular view of the matter.

18. As stated earlier, we will have to examine whether any interference is permissible in the findings rendered by the Authority and the Appellate Authority and in that context, only we proceed to analyze what was argued before the Authorities and the findings thereof.

19. In Notification No.1/2017- Central Tax (Rates) dated 28 June 2017, entries have been specified. The Petitioner's goods, i.e. marine paint, fall in Schedule III, and the rate is 18%. There is not in dispute that the Petitioner manufactures marine paint and is covered under Serial No.52A Chapter-3208. The Petitioner wanted the goods to be classified under Serial No.252 under any chapter as part of a ship under Heading No.8901, which deals with cruise ships, excursion boats, ferry boats, cargo ships, barges and similar vessels for the transport of persons or goods. The advance ruling sought by the Petitioner is, as stated above whether the marine paint supplied by the Petitioner should be considered part of the ship and accordingly classified under Serial No.252 of Schedule-I. Therefore, what the Petitioner has sought is that the anti-fouling paint should be considered part of the ship. The Authority and the Appellate Authority have taken the view that Petitioner's goods- marine paint cannot be considered as part of the ship.

20. The contention of the Petitioner, as stated earlier and which was made before the Authorities is that without the anti-fouling paint as per the mandatory provision of the Merchant Shipping Act, the ship is not permitted to sail and, therefore, the anti-fouling paint is an integral and mandatory part of the ship. The Petitioner also contends that the anti-fouling paint is a specific type

of paint principally used in the ship during the building stage and for maintenance, and if anti-fouling paint is not applied, it has a serious impact on the longevity and transportation capacity of sea carriers. Anti-fouling paint protects the body of the ship from a corrosive environment. It also prevents the attachment of unwarranted marine organisms to the hull of the ship. It is also contended that since vessel sails from one ocean to another, transporting marine organisms from one ocean to another has an adverse implications on marine ecology.

21. Thus, what principally the Petitioner seeks is the re-classification of its goods by the Authorities. The thrust of the Petitioner's argument before the Authorities centered around the legal provisions, i.e. sections 356P, 356Q, 356R and 356X of the Merchant Shipping Act to demonstrate that the use of ship without marine paint is not legally permissible. It was also the contention of the Petitioner that the Authorities proceeded on surmises and referred to phrases such as "common parlance" when there is no evidence and data based on which such position could have been assumed. The Petitioner has also sought to criticize the approach of the Authorities in mentioning the analogy that the units such as walkie-talkies, binoculars, life jackets, and lifeboats on the ground of such safety equipment are generic and not ship-specific. The Petitioner had also contended that the standards prescribed for hull performance under ISO 19030-1:2016 state that an anti-fouling

system is necessary for maintaining the hull in proper condition. Even the Merchant Shipping (Control of Anti-Fouling System) Rules, 2016 makes marine paint mandatory.

22. Both the Authority and the Appellate Authority have dealt with the Petitioners' contentions. The Authority has observed that the paint generally means any liquid or composition that, after application to a substrate in a thin layer, converts into a solid film. There are various types of paints; one type is anti-fouling paint, which falls under Item 3208. It was the Petitioner's case that the goods marine paint would be covered under Sr.No.252 being part of goods falling under Headings-8901, 8902, 8904, 8905, 8906 and 8907 and; therefore, the enquiry before the Authority was restricted to ascertaining whether goods- marine paint supplied by the Petitioner would be a part of goods Headings 8901, 8902, 8904, 8905, 8906 and 8907. Both the Authorities concluded that just because, as per the Merchant Shipping Act, the marine paint is mandatory to be applied, it does not become part of the ship. This is a considered opinion reached by both Authorities. To arrive at this conclusion, both the Authorities have adopted the approach required for the classification of the goods in the context of the application of tax, and the Authorities have not widened the enquiry to ascertain various issues sought to be raised by the Petitioner as regards the legality of sailing of the vessel without the marine paint. Both the Authorities have distinguished the judicial precedents, which would be referred to subsequently, stating that those decisions arise from a

different context and do not assist in deciding the issue upon which advance ruling was sought.

23. The contention of the Petitioner primarily centered around the necessity to apply marine paint to increase the longevity and productivity of the vessel, and the legal position requiring that the paint to be used on a ship without which it cannot sail and requirements of International Conventions for applying anti-fouling system. Though the learned counsel for the Petitioner is right in contending that the argument of the learned counsel for the State that paint is just one part of the anti-fouling system was not a ground on which both the Authorities decide the question, the conclusion arrived at by the Authorities cannot be said to be without considering the material on record. We have already underscored the limited arena within which the writ Court will examine the orders of the Authority and the Appellate Authority.

24. We find that in its enquiry, the Authority has correctly focused on the meaning of the word “part” in terms of classification and has held that to make the vessel operative as a matter of mechanics, marine paint is not necessary. Both the Authorities have proceeded on the basis that there is a distinction between what makes the Whole operational from what makes the Whole legal to use. The Petitioner is mixing up legality with mechanics. The Authorities have rightly focused only on the first aspect as that was the scope of enquiry before them. Once the Authorities correctly

adopted that approach, the issue of whether the ship was permitted in law to sail in view of the statutory provisions was an issue outside the enquiry of the Authorities. There is no error in the principle adopted by the Authorities that a part is one without which the whole cannot function and then applying that to the Petitioner's case. This is the only enquiry that both the Authorities had to undertake and they have rightly undertaken the same. There is no dispute before us that a ship can enter the water and sail without the marine/anti-fouling paint. We find that there is no fundamental legal error in the approach going by the decision of the Supreme Court in the case of *Asahi India*. Once we reach that conclusion, proceeding further to analyze would amount to exercising appellate jurisdiction.

25. The judicial precedents cited before us by the learned counsel for the Petitioner were cited before both the Authorities and the Authorities have rendered an opinion that the decisions are not applicable. We have examined the findings of the Authorities to ascertain whether the Authorities have ignored any binding precedents.

26. The Petitioner heavily relied upon the decision of the Queen's Bench in the case of *Day v. Harland and Wolff Ltd.* According to the Petitioner, this decision has concluded that the marine paint with anti-fouling composition is a part of the ship. The facts and the legislation under which the issue arose before the

Queen's Bench Division will have to be analysed. The plaintiff therein, a ship painter, was employed by the defendant. While he was painting the ship in a public dry dock by standing on a plank which had become slippery, he slipped and fell and suffered an injury. The plaintiff alleged that the ship was in a public dry dock within the meaning of Shipbuilding Regulations. The Queen's Bench posed a question of whether the work of painting the bottom plates of the ship with anti-fouling paint was a "work of repair" within the meaning of the Regulations. Pearson J. speaking for the Bench observed that there is no evidence of expert character as to what is involved in putting on anti-fouling paint and whether the ship when it first sails the seas has anti-fouling paint on its bottom plates. The Bench observed that it is reasonable to suppose that ship is not complete without anti-fouling paint and stated that the paint on its bottom plate is an important part of the ship and found that the work of repainting anti-fouling paint is the work of rectifying defects and, therefore, is a work of repair. Before the Queen's Bench, the dispute was whether the work of the plaintiff was the work of repair or the work of maintenance, and the observations made regarding the anti-fouling paint and the conclusion drawn were that it was a work of repair. From this decision, rendered in completely different facts and circumstances, for a different purpose of enquiry, the Authorities could not have concluded it a binding dicta on the Authorities that the marine paint is part of the ship for the classification of entries.

27. The Petitioner had also relied upon the decision of the Hon'ble Supreme Court in *Jay Engg. Works Ltd.* This decision was in an appeal from the order of the Customs Excise and Gold (Control) Appellate Tribunal under section 35L(b) of the Central Excises, and Salt Act, 1944. The issue was regarding the nameplates to be fixed on the electric fans. The Hon'ble Supreme Court observed that to obtain proforma credit, fans with nameplates have a certain value that the fans without the nameplates did not have, and the fans did not become marketable products without the nameplates. The Hon'ble Supreme Court observed that the name should be in terms of the relevant Notification. The third decision relied upon by the Petitioner was of the Hon'ble Supreme court in the case of *H.M.M. Ltd.* In this case, whether the metal screw cap put on the bottled product, Horlicks, was a part of the manufacturing process in question. The Tribunal had held that the metal screw cap put on the bottle was manufacturing process. The Hon'ble Supreme Court again considered the matter in terms of marketability and observed that after the Horlicks bottle is packed in the bottle with a metal screw container only at that stage it becomes a marketable and excisable article. In the case of *Star Paper Mills Limited v. Collector of Central Excise, Meerut*<sup>10</sup>, the decision relied upon by the Petitioner before the Authorities, the issue arose before the Hon'ble Supreme Court in the appeal under the Central Excise Act against the order of the Appellate Tribunal. The Hon'ble Supreme Court

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<sup>10</sup> (1970) 76 STC 312 (SC)



held that paper core is necessary for rewinding of paper if it is delivered to the customer in rolls and would fall within the purview of the expression "any process incidental or ancillary to the completion of a manufactured product". Based on these decisions, the Petitioner sought to contend that anti-fouling paint is a part of the ship. Admittedly, these decisions did not arise from the same statutory provision as were before the Authority in the present case. Both the Authorities have rightly analyzed these decisions to hold that it is in the context of marketability.

28. In the case at hand, the Authority was considering the interpretation and classification of entries under the CGST Act. In our opinion, the Appellate Authority has rightly distinguished all these decisions cited observing that under this regime prime test is whether the product is marketable or not. Similarly, the Appellate Authority has also referred to and distinguished the decision of the Gujarat High Court in the case of *Surgichem v. State of Gujarat*<sup>11</sup>. The Authorities have dealt with the decisions cited before the Authorities, and there is no fundamental error in their approach.

29. Thus, the view taken by the Authority and Appellate Authority is based on the material placed before it. The Petitioner seeks to convert this limited enquiry in respect of Advance Ruling into an appellate enquiry, which is not permissible to be undertaken in writ jurisdiction. The scrutiny in writ jurisdiction of the orders

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passed by the Authority and the Appellate Authority is minimal. The Petitioner, who sought an advance ruling as to which entry the marine paint should fall, was given full opportunity of hearing. Both the Authorities have dealt with the issue in extenso, have considered the submissions and the law cited and have taken a view in the matter which cannot be considered as suffering from fundamental error or absurd or perverse, assuming that such a test can be applied and, therefore, we are not inclined to interfere with the orders passed by both the Authorities.

30. Writ petition is accordingly dismissed.

(GAURI GODSE, J.)

(NITIN JAMDAR, J.)