

(1995) 02 GUJ CK 0024

In the Gujarat High Court

Case No : Special Civil Application No's. 640, 935 and 4968 of 1990 and 4707 of 1989

Haryana Ship-Breakers Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 06-02-1995

Acts Referred:

Customs Act, 1962 — Section 2(15)

Citation : (1997) 96 ELT 541 : (1996) 1 GLR 623

Hon'ble Judges : S.K. Keshote, J;A.P. Ravani, J

Bench : Division Bench

Advocate : Mihir J. Thakore and Mihir Joshi, for K.S. Nanavati, for the Appellant; H.M. Mehta and J.D. Ajmera, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

A.P. Ravani, J.—In all these petitions common questions of law and fact arise. Therefore, at the request and with the consent of the learned Advocates appearing for the parties, all these four petitions have been heard together and are being disposed of by this common judgment and order. With the consent of the learned Advocates appearing for the parties, affidavit-in-reply filed in Special Civil Application No. 640 of 1990 is treated as affidavit-in-reply in all the four petitions.

2. The petitioners are engaged in the business of ship-breaking. For the purpose of their business, they import ship at Alang shipyard in Bhavnagar district. The import duty is leviable on the vessels for breaking up as provided under Chapter 89, Heading 89.08 and sub-heading 8908.00 of Customs Tariff Act, 1975. The duty is leviable at 40 per cent ad valorem plus Rs. 1,400/- per Light Displacement Tonnage (L.D.T.). Note 2 of the Chapter reads as follows :

"2. In heading No. 89.08 "Light Displacement Tonnage (L.D.T.)" means L.D.T. in metric tonnes as per Builder's Registered L.D.T. referred to in the Stability Book or the Builder's certificate at the time of initial commissioning of the vessel or

the floating structure :

Provided that in case of any change in the L.D.T., the highest of the L.D.T. indicated in any of the documents referred to above shall be taken for the purpose of levy of duty."

3. The petitioners in all these petitions have challenged the constitutional validity of Note 2 in Chapter 89 which has been reproduced hereinabove. In three petitions, i.e., Special Civil Application Nos. 640 of 1990, 4968 of 1990 and 4707 of 1989, the petitioners have also prayed for quashing and setting aside the order passed by the Assistant Collector by which the petitioners have been asked to pay import duty calculated on the basis of highest L.D.T. indicated in one of the documents. In these three petitions, the petitioners have prayed for refund of the differential duty which they have been asked to pay by the impugned order. In Special Civil Application No. 935 of 1990, initially the vessel imported by the petitioners was cleared on the basis of L.D.T. which was not the highest. Therefore, show cause notice dated May 2, 1989 was issued calling upon the petitioners to pay differential amount of duty. The petitioners replied to the show cause notice. The Assistant Collector of Central Excise, Bhavnagar confirmed the demand. In this petition, the petitioners have challenged the legality and validity of the order passed by the Assistant Collector, Central Excise, Bhavnagar by which the demand has been confirmed.

4. Undisputed facts as regards the import of vessel, amount of differential duty and the order under challenge are as follows :

----- Spl. C.A. Name			
of the vessel	Amount of	Order under challenge	No. differential duty (Rs.)

640/90 M.V. Borisa	3,64,490.00	The impugned order is contained in bill of entry at Annexure "C"	4707/89 M.V. Mubarak
5,66,443.00	Decision contained in bill of entry at Annexure "E"	4968/90 M.V. Bessemer	8,55,675.75
Decision contained in bill of entry at Annexure "J"	935/90 M.V. Khanalakshe	5,16,389.95	Annexure "I"
passed	by	Asstt.	Collector

5. In short, the controversy between the parties is as to whether the duty of customs and additional duty of customs as provided under the appropriate provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975 could be levied and collected by the revenue on the vessel imported into India for breaking up on the basis of L.D.T. in metric tonnes as noted in Stability Book of Builder's certificate at the time of initial commissioning of the vessel and in case of any change in the L.D.T., highest L.D.T. indicated in any of the documents referred to above can be taken for the purpose of levy of duty ? It is an undisputed fact that in each case the actual L.D.T. of the vessel imported into India is less than the L.D.T. registered in the Stability Book or the Builder's certificate. It is also an undisputed fact that the department has levied and

collected the customs duty and the additional only of customs not on the basis of the actual weight of the ship when it was brought into India. It has been levied and collected in the basis of the weight indicated in Stability Book or Builder's certificate which is the highest L.D.T. reflected in the documents relating to the ship. In three petitions, i.e., Special Civil Application Nos. 640 of 1990, 4968 of 1990 and 4707 of 1989, the Superintendent of Customs assessed the duty on the basis of highest L.D.T. indicated in the Stability Book. While in the case of Special Civil Application No. 935 of 1990, the Superintendent of Customs assessed the duty on the basis of actual L.D.T., that is to say, he took into consideration the removals indicated in the Memorandum of Agreement relating to the purchase of ship and in other documents. Therefore, a show cause notice demanding differential amount of duty was issued and the Assistant Collector as per order dated January 29, 1990 confirmed the demand. Except with the variation in the factual aspect as regards the date of purchase of ship, date of bill of entry and the weight of the ship and the amount of duty collect or ordered to be collected, the basic facts are identical and not in dispute. Therefore, the controversy is required to be examined and decided on the basis of provisions of law applicable to the questions raised in the petition.

6. It is also an undisputed position that Note 2 occurring in Chapter 89 of Customs Tariff Act, 1975 has been deleted from March 1, 1994. At present, import duty on vessel and other floating structures for breaking up is covered by Chapter Heading 89.08 and sub-heading No. 8908.00 and it is levied at the rate of 15 per cent ad valorem with countervailing duty. This provision has come into effect from March 1, 1994.

6A. The relevant provisions of law may be stated. Entry 83 of List I - Union List in Seventh Schedule of the Constitution of India reads as follows :

"83. Duties of customs including export duties."

Thus, as per the Constitutional provisions, the Central Government is empowered to levy duties of customs. Customs Act, 1962 (for short "the Act") defines duty in Section 2(15) of the Act to mean duty of customs leviable under the Act. Goods have been defined in Section 2(22) of the Act which reads as follows :

"(22) "goods" includes -

- (a) vessels, aircraft and vehicles;
- (b) stores;
- (c) baggage;
- (d) currency and negotiable instruments;
- (e) any other kind of movable property;"

The term "import" occurring in Section 2(23) reads as follows :

"(23) "import", with its grammatical variations and cognate expressions, means

bringing into India from a place outside India."

Section 12 of the Act is the charging section which occurs in Chapter V of the Act and it reads as follows :

"12. Dutiable goods. - (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rate as may be specified under the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force, on goods imported into, or exported from India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government."

Section 15 of the Act provides the date for determination of rate of duty and tariff valuation of imported goods which reads as follows :

"15. Date for determination of rate duty and Tariff valuation of imported goods. - (1) The rate of duty and Tariff valuation if any, applicable to any imported goods, shall be the rate and valuation in force -

(a) in the case of goods entered for home consumption u/s 46 on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in the case of goods cleared from a warehouse u/s 68, on the date on which the goods are actually removed from the warehouse;

(c) in the case of any other goods, on the date of payment of duty :

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards.

(2) The provisions of this section shall not apply to baggage and goods imported by post."

Section 22 of the Act provides for abatement of duty on damaged or deteriorated goods. Section 23 of the Act provides for remission of duty on lost, destroyed or abandoned goods. Section 128 of the Act provides for appeals against any decision or order passed under the Act by an officer of customs lower in rank than a Collector of Customs.

7. Section 2 of the Customs Tariff Act, 1975 provides for duties specified in the Schedule to be levied and it reads as follows :

"2. The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962) are specified in the First and Second Schedules."

First Schedule relates to import and Second Schedule relates to export. Chapter 89 of the First Schedule to the Act relates to ships, boats and floating structures. Note 2 in this Chapter defines or describes Light Displacement Tonnage (L.D.T.), which is under challenge in these petitions. At the relevant time, duty on vessel

and other floating structure for breaking up was covered by the provisions of Heading No. 89.08, sub-heading 8908.00, i.e., vessels and other floating structures for breaking up.

8. It is contended that as per the provisions of Section 12 of the Customs Act, 1962, duty of customs could be levied "on goods imported into or exported from India". On the basis of the aforesaid provision, it is further submitted that in the instant case, the goods imported into India is of lesser quantity than what is subjected to tax of import duty. It is further argued that on the goods which have never been imported, the Government has no power to levy import duty. Therefore, Note 2 in Chapter 89 of the Customs Tariff Act, 1975 which empowers the department to levy import duty on the basis of L.D.T. noted in the Stability Book or in Builder's certificate whichever be the highest is beyond the scope of the powers of the Government. The argument is sought to be buttressed by referring to Entry 83 of the Union List I of the Seventh Schedule to the Constitution which empowers the Central Government to enact laws providing for duty of customs including export duty.

9. The contention cannot be accepted for the simple reason that it is based on misconception as regards the subject-matter or object of tax. Subject-matter of import duty is not the weight of ship. The tariff entry itself is very clear. The tax is on vessels and floating structures for breaking up. Reference to L.D.T. is by way of measurement of tax. Note 2 merely lays down the rule of evidence as to which weight is to be taken as conclusive proof of the weight of the vessel imported. What is imported into India is a vessel. What should be the rate of duty and how the same is to be measured and levied is certainly within the competence of the Parliament. Customs Tariff Act, 1975 provides for measure of duty. The impugned Note 2 lays down the rule of evidence for the purpose of levying the duty. As far as measure of duty is concerned, the Legislature has ample power to provide measure for recovery of taxes. In this connection, reference may be made to a decision of the Supreme Court in the case of *Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam*, . In para 21 of the reported decision, it is *inter alia* observed as follows :

"It may be conceded that when the legislature constructs a machinery for the recovery of the taxes which it is within its competence to impose, the said machinery should have some rational or intelligent connection with the tax...."

"Consideration of administrative convenience as well as considerations or facility in recovering the tax cannot be treated as irrelevant in this context."

Again in Para 23 of the reported decision, it is, *inter alia*, observed that the method of collection does not affect the essence of duty but only relates to the machinery of collection for administrative convenience. In Para 40 of the same decision, principle is laid down with regard to law on tax which reads as follows :

"This law of taxation is on the ultimate analysis the result of the balancing of several complex considerations, and so, it would be unreasonable to insist upon

the application of general rule that if a tax is levied at a flat rate, it must be treated as unreasonable. In the present case, the legislature may have considered the requirements of the trade carried on by the producers of tea and may have thought that a flat rate would be just and fair to the trade as a whole. There are questions which must normally be left to the legislature to decide."

In Para 44 of the said decision reiterating the decision in the case of Raja Jagannath Baksh Singh Vs. The State of Uttar Pradesh and Another, , it is observed as follows :

"Besides, the legislature which is competent to levy a tax must invariably be given full freedom to determine which articles should be taxed in what manner and at what rate."

10. The aforesaid principle has been reiterated by the Supreme Court in the case of Union of India (UOI) and Others Vs. Bombay Tyre International Ltd. and Others, . The Supreme Court has referred to the confusion which may ordinarily be attempted to be created as regards the nature of the tax and the measure employed for assessing the tax. The Supreme Court in this connection referred to several decisions commencing from the case of AIR 1949 81 (Federal Court) , and then observed as follows :

"It has long been recognised that the measure employed for assessing a tax must not be confused with the nature of the tax."

After discussing the case laws on the point, in Para 15 of the reported decision, the Supreme Court has further observed as follows :

"It is apparent, therefore, that when enacting a measure to serve as a standard for assessing the levy the Legislature need not contour it along lines which spell out the character of the levy itself. Viewed from this standpoint, it is not possible to accept the contention that because the levy of excise is a levy on goods manufactured or produced the value of an excisable article must be limited to the manufacturing cost plus the manufacturing profit. We are of opinion that a broader based standard of reference may be adopted for the purpose of determining the measure of the levy. Any standard which maintains a nexus with the essential character of the levy can be regarded as a valid basis for assessing the measure of levy."

Thus, all that is required to be seen is as to whether the measure of levy has any nexus with the essential character of the levy. If a standard or a measure which maintains a nexus with the essential character of the levy then it has to be regarded as valid basis for assessing the measure of levy.

11. In view of the aforesaid settled legal position, it is not possible to agree with the contention raised by the learned Counsel for the petitioners that Note 2 of Chapter 89 of the Customs Tariff Act, 1975 is not within the competence of the Central Government.

12. The learned Counsel for the petitioners submitted that Note 2 occurs in Schedule I to the Customs Tariff Act, 1975 while charging section is in text of the Act. In his submission, when there is conflict between the text of the statute and the provisions of the Schedule to the Act, the provisions contained in text of the Act must prevail. In this connection reliance is placed on the decision of the Supreme Court in the case of *Aphali Pharmaceuticals Ltd. Vs. State of Maharashtra and Others*, . Undoubtedly the submission made by the learned Counsel for the petitioners on the basis of the observations made by the Supreme Court is correct. But the question is - "Is there any conflict between the provisions of the Schedule and the provisions of the text of the Act ?" In our opinion, there is no conflict between the two. Section 12 of the Act provides for levy of duty of customs on the goods imported into India. Note 2 to Chapter 89 occurring in Schedule I to the Customs Tariff Act, 1975 does not provide for taxing goods which have never been imported into India or which have never been in existence. As indicated hereinabove, what is taxed is vessel. Note 2 prescribes the measure on the basis of which the customs duty is to be levied. Therefore, the contention that there is conflict between the provisions of the text of the Act and the provisions contained in the Schedule to the Act has no merits.

13. The learned Counsel for the petitioners submitted that by inserting Note 2 in Chapter 89 of Schedule I to the Customs Tariff Act, 1975, the Legislature has created a fiction. In his submission, undoubtedly, the Legislature has power to create fiction. But by creating fiction that which is not within the powers of the Government cannot be provided, in other words, in his submission, by creating fiction, the Parliament cannot impose tax which may be outside relevant entry. In the instant case, it is Entry 83 of the Seventh Schedule to the Constitution. In this connection, reliance is placed on the decision of the Supreme Court in the case of *Chandrana and Co. Vs. State of Mysore*, of the reported decision, it is inter alia observed that the only limit on the power of a Legislature to create a fiction is that it should not transcend its power by its creation. By inserting Note 2 in Chapter 89, the Parliament cannot be said to have transcended its power conferred upon it by Entry 83 of Union List I to Seventh Schedule to the Constitution. As indicated hereinabove, Entry 83 of List I of Seventh Schedule read with Article 246 of the Constitution empowers the Parliament to enact laws with respect to any matters enumerated in List I. Entry 83 relates to duty of customs including export duties. It is under this power conferred upon the Parliament by the Constitution that the Customs Act, 1962 and Customs Tariff Act, 1975 have been enacted. As indicated hereinabove, no deeming fiction has been created by the Legislature while inserting Note 2 in Chapter 89 of First Schedule to the Customs Tariff Act, 1975. All that has been done by the Legislature is to provide machinery or measure for assessing the levy of import duty. In the entry as it existed at the relevant time, duty was based on value as well as on quantum of goods imported. Note 2 has removed the difficulties in ascertaining the L.D.T. for the purpose of levy of duty. In respect of a vessel imported into India for the purpose of breaking up, there could be different

weight in respect of different vessels. Such different weights are bound to be reflected in the document relating to the vessel. Some of such documents are - (1) Stability Book, (2) Builder's certificate at the time of commissioning of vessel, (3) Memorandum of agreement between the parties as regards sale or purchase of the vessel, (4) Surveyor's report as regards actual weight of the vessel at the time of import and (5) Certificates of additions or alterations in the vessel after the ship is commissioned and after the weight of the same is registered in the Stability Book or in Builder's certificate. Naturally, therefore, difficulty would arise as to which weight is to be taken as basis for levy of duty. If this is not clarified by the Legislature, several intractable problems would arise in relation to assessment and collection of duty. The Assessing Officer who will be ordinarily of the rank of Superintendent of Customs would be the person who will have power or discretion to choose any of the documents and levy import duty on the basis of the weight reflected in one of such documents. Again this would certainly result into uncertainty and may also create difficulties for the importers. On the other hand, there are also chances of manipulations in registering the weight in different documents. These documents would be prepared at different point of time and by different parties. Therefore, in order to avoid uncertainties and several intractable problems which may arise in administration, Note 2 is inserted laying down the criterion as regards evidence of conclusive proof of the weight of the vessel imported into India.

In this connection, reference may be made to basic cannons of taxation laid down by Adam Smith in his well-known treatise "The Wealth of Nations" (See Great Books of the Western World published by Encyclopaedia Britannica Inc.) which reads as follows :

"II. The tax which each individual is bound to pay ought to be certain, and not arbitrary. The time if payment, the manner of payment, the quantity to be paid ought all to be clear and plain to the contributor, and to every other person. Where it is otherwise, every person subject to tax is put more or less in the power of the tax gathered, who can either aggravate the tax upon any obnoxious contributor, or extort, by the terror of such aggravation, some present or perquisite to himself. The uncertainty of taxation encourages the insolence and favours the corruption of an order of men who are naturally unpopular, even where they are neither insolent nor corrupt. The certain of what each individual ought to pay is, in taxation, a matter of so great importance that a very considerable degree of inequality, it appears, it believe, from the experience of all nations, is not near so great an evil as a very small degree of uncertainty.

III. Every tax ought to be levied at the time, or in the manner, in which it is most likely to be convenient for the contributor to pay it. A tax upon the rent of land or of houses, payable at the same term at which such rents are usually paid, is levied at the time when it is most likely to be convenient for the contributor to pay; or, when he is most likely to have wherewithal to pay. Taxes upon such consumable goods as are articles of luxury are all finally paid by the consumer,

and generally in a manner that is very convenient for him. He pays them by little by little, as he has occasion to buy the goods. As he is at liberty, too, either to buy, or not to buy, as he places, it must be his own fault if he ever suffer any considerable inconveniency from such taxes."

The aforesaid cannons of taxation have been approvingly referred to be a Full Bench of this Court in the case of Ahmedabad Mfg. and Calico Prtg. Ltd. and Others Vs. Union of India, . In view of the aforesaid settled legal position and the basic principles as regards cannons of taxation, the contention that by inserting note, the Parliament has enacted something which is beyond its competence cannot be accepted.

14. The learned Counsel for the petitioners submitted that the measure of tax which is provided by inserting Note 2 affects the very essence of tax. The submission cannot be accepted. The essence of tax remains the same. All that has been done by inserting Note is to lay down the meaning and method in which the levy of duty on imported vessel is to be assessed. The essential character of duty of import remains the same. Therefore, reliance placed on certain observations made by the Hon"ble Supreme Court in the case of Diamond Sugar Mills Ltd. and Another Vs. The State of Uttar Pradesh and Another, is of no help to the petitioners.

15. The learned Counsel for the petitioners submitted that the provisions made in the impugned Note 2 is unreasonable and discriminatory. It is contended that when two individuals import two different vessels, each of them should be charged on the tonnage availability of the vessel and not on the basis of registered L.D.T. which may be highest either in Stability Book or in Builder's certificate. It is contended that tonnage availability to both these two persons would be different and therefore, the duty has to be related to tonnage availability. In other words, the contention is that if the difference is not related to the actual tonnage availability in a particular vessel, it would result into discrimination. The argument cannot be accepted for the simple reason that the tax is on vessel and the basis of the assessment of duty on vessel is the registered L.D.T. as indicated in the Note. Two different individuals who might be purchasing two different types of ships would very well know that they are required to pay import duty on the basis of highest L.D.T. registered in either Stability Book or the Builder's certificate. The ship purchased by one of them might be damaged or deteriorated and to him the actual tonnage availability may be less. But both of them know full well that import duty payable by each one of them is on the basis of registered L.D.T. as indicated in the impugned Note. By no stretch of reasoning, it can be said that two persons equally situated are being treated unequally or two persons unequally situated are being treated equally. On the contrary, as indicated hereinabove, the impugned Note lays down standard or uniformity and avoids all the chances of uncertainty and creation of intractable problems in administration of levy and collection of tax. In this connection, reference may be made to a decision of the Supreme Court in the

case of M/s. Khadi and Village Soap Industries Association and another Vs. State of Haryana and others, wherein it is held that in matters of taxation, the test applicable for striking down a taxing provision should be one of palpable arbitrariness. In the instant case, on the contrary, the Note introduces reasonableness, certainty and convenience to both the importer as well as to the assessing authority. There is no substance in the contention that the note is unreasonable, arbitrary or discriminatory.

16. It was contended that Note 2 contained in Chapter 89 is clarificatory in nature. In the submission of the learned Counsel for the petitioners, tariff item contained in Heading 89.08 in sub-heading 8908.00 is very clear. Therefore, the import duty should be assessed only by referring to tariff item and therefore, Note 2 should be considered as redundant. The argument on the face of it is fallacious. Implicit assumption in the argument is that the Parliament has inserted Note without any meaning. This submission is against the basic canons of interpretation of statute. One of the basic canons of interpretation of statute is that the Legislature never enacts any provision which may be superfluous or redundant. The Courts are bound to give meaning to the provisions enacted by the by the Legislature unless, by necessary implication, it is shown that the provision enacted is superfluous. In the instant case, without the impugned Note, there would be ambiguity as regards the basis of assessment of duty, that is to say, as regards the L.D.T. which should be taken into consideration for the purpose of assessment of duty. It is with a view to remove difficulty and uncertainty that the Note is inserted. Without the Note, tariff item would remain ambiguous and it may enable both the assessing authority and the importer to indulge into arbitrariness and/or manipulations. The impugned Note has a purpose. The purpose is to remove the possible uncertainties which may arise on account of arbitrariness on the part of assessing authorities and on account of manipulations on the part of importers. Other purpose appears to be to lay down uniformity. The object of the Note cannot be said to be merely clarificatory as is sought to be argued. It may be noted that in three of the petitions, i.e. Special Civil Application Nos. 640 of 1990, 4868 of 1990 and 4707 of 1989, the decision taken by the Superintendent of Customs, as regards the assessment of import at the time of presentation of bill of entry is challenged. This decision is contained in bill of entry itself. It is conceded on behalf of the petitioners that entire bill of entry is not produced on record of these three petitions. However, there is no dispute with regard to the fact that the basis of assessment of import duty is the highest L.D.T. reflected in two of the documents, i.e. Stability Book and Builder's certificate. In each case, the L.D.T. registered in the Stability Book has been taken as the basis of the assessment of duty. It is prayed that this decision is required to be quashed and set aside.

17. For the reasons stated hereinabove, the decision taken by the assessing authority, i.e. Superintendent of Customs is eminently just and proper and the same is in accordance with the provisions of law.

18. In Special Civil Application No. 935 of 1990, the order dated January 29, 1990 passed by the Assistant Collector confirming the demand made in the show cause notice is under challenge. The Assistant Collector has taken into consideration the Memorandum of Agreement wherein L.D.T. is noted as 6040 MT as per the original papers of the ship. This has been taken as the basis for assessing the import duty applying Note 2 of Chapter 89. In this connection, the Assistant Collector has observed as follows :

"According to Chapter Note at Sr. No. 2 of Chapter 89 for the purpose of assessment, L.D.T. at the time of initial commissioning of the vessel is required to be adopted in this case, because the L.D.T. is changed on account of subsequent removables of the articles from the ship, and the party has claimed the assessment of changed L.D.T. of 5578.8 MT."

It is evident that the Assistant Collector has taken the highest L.D.T. noted in the original papers of the ship. It is true that there is no specific reference to the Stability Book or Builder's certificate. But the order has to be read in light of the controversy raised before the Assessing Authority and in light of the provisions which were relied upon by the parties. The substance of the order is that in case of change in L.D.T. after the initial registration of the vessel, the highest L.D.T. reflected in any of the documents referred to in Note 2 is required to be taken for the purpose of assessment of duty. The Assistant Collector has correctly applied the law to the facts and circumstances of the case. We find no error whatsoever in the order passed by the Assistant Collector.

19. Having decided the question with regard to the Constitutional validity of Note 2 of Chapter 89, we might have considered the question of relegating the parties to the appeal remedy as provided u/s 128 of the Customs Act, 1992. However, no other point is urged by the petitioners except with regard to the Constitutional validity of Note 2 in Chapter 89 and the correct interpretation thereof. In view of this position, no useful purpose will be served by relegating the petitioners to the remedy of appeal. This would, on the contrary, result into multiplicity of litigation and unnecessary procrastination of litigation. For these reasons, the question of relegating the petitioners to the remedy of appeal does not arise.

Additional point in Spl. C.A. No. 4968 of 1990 :

20. In this case, the ship arrived at Alang Port on March 9, 1990. However, it was drifted away and it was found at village Pinjaran. From there it was brought to Alang in March 28, 1990. The petitioners filed bill of entry on March 19, 1990. The Superintendent of Customs, Alang, has assessed import duty on the basis of rate prevailing on March 28, 1990, treating the bill of entry as having been filed on March 28, 1990. It is an undisputed position that there is some change in the rate of duty between the two dates, i.e., March 19, 1990 and March 28, 1990.

21. On the basis of provisions of Section 46 sub-section (3) proviso (2), it is submitted that bill of entry in respect of vessel in question was presented on March 19, 1990 and, therefore, March 19, 1990 should be taken as the date for

assessing duty. However, the ship was actually brought from Pinjaran near Surat on March 28, 1990. The provisions of Section 46 sub-section (3) proviso (2) would not be applicable to the vessel in question inasmuch as it is not a vessel by which goods have been shipped. In the instant case, the vessel itself is the goods which has been imported. Therefore, the aforesaid provision which enables presentation of bill of entry in advance, i.e., in anticipation of the goods being imported within a week would not be applicable. In this view of the matter, the argument based on the provisions of Section 15 and the proviso to Section 15(1) is not required to be considered. The argument is that the requirement of entry inwards would be in respect of conveyance only. As indicated hereinabove, what is imported is goods and not conveyance. The goods may be vessel, but it is not imported as a conveyance. The vessel itself being goods, it comes on its own. It is not being conveyed in any other conveyance. It is concluded by decision of Hon"ble Supreme Court in the case of Chowgule and Co. Pvt. Ltd. Vs. Union of India (UOI) and Others, that vessel is goods within the meaning of the term goods defined in the Act. Therefore, the argument that the provisions regarding date of entry inwards which is in relation to the vessel is not relevant at all. The date of determination of rate of duty would be the presentation of the bill of entry and the bill of entry should be presented as provided u/s 46(1) on the date when the goods have been imported and are ready for inspection by the Port Officer. In the instant case, the goods were ready for inspection by the Port Officer only on the date of actual arrival on March 28, 1990.

22. For the aforesaid reasons, all the petitions are rejected. Rule discharged.