(2001) 04 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No. 1818 of 2000

Pride Foramer APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 24-04-2001

Acts Referred:

Constitution of India, 1950 — Article 1(3), 297, 51
Customs Act, 1962 — Section 12, 14, 15, 2(21), 53
General Clauses Act, 1897 — Section 3(28)
Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 — Section 6, 6(6), 7, 7(7)

Citation : AIR 2001 Bom 332 : (2002) 1 ALLMR 151 : (2002) 4 BomCR 751 : (2002) 101 ECR 500 : (2002) 148 ELT 19 : (2001) 3 MhLj 819

Hon'ble Judges : V.C. Daga, J;S.H. Kapadia, J

Bench : Division Bench

Advocate : E.P. Bharucha and K.S. Setalwad, instructed by Mulla and Mulla Craigie Blunt and Caroe, for the Appellant; A.H. Bahatija and R.C. Master, for the Respondent

Final Decision : Dismissed

Judgement

V.C. Daga, J.

INTRODUCTION

1. What are the boundaries of India in relation to maritime law is one of the questions of some potential significance raised in this petition, while questing the levy of customs duty on goods (spares/stores) imported by the petitioner for being transshipped for its use at the oil rig as spares and stores which carries on operation in designated area of the country as defined under the Act with the Territorial Waters Continental Shelf. Exclusive Economic Zone and Other Maritime Zones Act, 1976 ("the Maritime Zones Act, 1976" for short).

FACTUAL MATRIX

2. The factual matrix lies in the narrow compass and it is this :

The petitioner is a foreign company having its registered office in France and branch office in Mumbai. The petitioner-company is engaged in the exploration and exploitation of offshore oil, gas and provides other related services as a contractor, and works for and on behalf of Oil and Natural Gas Commission ("ONGC" for short).

3. The petitioner carries on operation with its oil rig Pride Pennsylvania (hereinafter referred to as the "Rig") in the exclusive economic zone as defined under the Maritime Zones Act. 1976. The Oil Rig has a drilling machinery for drilling on the ocean floor, It is towed to the required locations outside the territorial waters of India and anchored and jacked up for drilling operations on the high seas. The drilling operations are carried on by the Oil Rig on the continental shelf.

4. The petitioner-company imports goods Including stores, spares, consumables and other articles required for the use on the Oil Rig. As the said imported goods/ stores cannot land directly on the Oil Rig, the same land at Mumbai Seaport/ Airport and the same are then transshipped to the Oil Rig.

5. The cause of action for filing this petition is the refusal by the respondents to permit the petitioner to tranship stores and equipments to the Oil Rig without payment of customs duty. The petitioner contends that the goods imported for Oil Rig are liable to be transshipped to the Oil Rig without levy of duty of customs. The petitioner contends that the respondents are wrongfully levying duty of customs on the goods, which are used on the rig.

RIVAL CONTENTIONS Submissions of the petitioner :

6. The submissions of the petitioner can conveniently be categorised in the following broad heads :

(A) The Oil Rig is vessel.

(B) The Oil Rig engaged in exploration/ exploitation of offshore oil, gas and other related services outside the territorial waters of India whilst operating in designated area is a foreign going, vessel pursuant to Section 2(21)(ii) of the Customs Act.

(C) The goods sent to the Oil Rig are stores and are liable to be transshipped to the Rig without payment of any custom duty or at any rate the petitioner is entitled to transship spares without payment of custom duty under Sections 53 and 54 of the Customs Act.

THE ARGUMENTS

The Oil Rig is a vessel.

7. The learned counsel appearing for the petitioner submits that the word vessel is not defined in the Customs Act, therefore, it should be understood in a commercial sense or in a sense in which people conversant therewith understand

it. In order to substantiate his submission, the learned counsel for the petitioner relied upon number of documents referred to in paragraph 5 of the petition and has pointed out certain certificates to contend that the Oil Rigs are considered to be "vessels" by the international community and sought to contend that the said question is no longer res integra in view of the judgment of the Division Bench of this Court in the case of Amerhsip Management (P) Ltd. and 9 ors. Vs. Union of India and Others, .

The Rig is a foreign going vessel.

8. The learned counsel for the petitioner further submits that Oil Rig engaged in exploration/exploitation of offshore oil, gas and other related services outside the territorial waters of India is a "foreign going vessel" pursuant to Section 2(21)(ii) of the Customs Act being a vessel engaged in operations beyond twelve nautical miles from the base line i.e. outside the territorial waters of India. He further submits that the Rig does not cease to be a foreign going vessel while operating within a designated area to which Customs Act is made applicable pursuant to the provisions of the Maritime Zones Act. Hence, the stores which are transferred to the Rig, while the Rig is in designated area, continue to be entitled to the benefits of Sections 86(2) and 87 of the Customs Act, which provides that any stores imported in a vessel or aircraft may be transferred to any vessel or aircraft as stores for consumption therein as provided in Section 87. Section 87 inter alia provides that imported stores may, without payment of duty, be consumed thereon as stores during the period such vessel is a foreign going vessel. In his submission, even where operations are carried on in the designated area, the Rig continues to operate outside the territorial waters of India. The learned counsel for the petitioner, in support of his above submissions, placed reliance on decision of this Court in Amerhsip Management (P) Ltd. and 9 ors. Vs. Union of India and Others, (supra) wherein this Court observed as under :

"..... apart from vessels which are engaged in carrying goods or passengers, vessels engaged in fishing or any other operations outside the territorial waters of India are included in the definition of the words ''foreign going vessel.'' "

9. The learned counsel, based on the above observations, contends that the Rigs are stationed beyond the Indian territorial waters, hence, they should be considered as foreign going vessels engaged in any other operations outside the Indian territorial waters.

10. The learned counsel for the petitioner cited few more decisions to bolster up his submission and placed reliance on the judgment of this Court in Jindal Drilling and Industries Ltd. v. Union of India (Writ Petition No. 610 of 1994) and Hitch Drilling Services India v. Union of India (Writ Petition No. 984 of 1997) and sought to point out that these cases followed the ratio of judgment in Amerhsip Management (P) Ltd. and 9 ors. Vs. Union of India and Others, (supra). He further sought to point out that in the said judgments this Court has held that the imported equipments and spare parts required for the Oil Rigs operation in

the high seas is a store not liable for custom duty. He further went on to submit that the question involved in this petition is covered and answered by the Division Bench in the cases cited supra and prayed that the said ratio should be followed in the instant petition.

11. In the above premises, the learned counsel for the petitioner argued that the action of the respondents refusing to clear consignments of the said imported goods/ stores and seeking to levy duty of customs upon the said goods imported by the petitioner and consumed as stores upon the Oil Rig is wholly arbitrary and without any authority of law and is an unreasonable exercise of powers vested in the respondents and has an effect of depriving the petitioner of equal protection of law, as such, the said action of the respondents contravene the provisions of Article 14 of the Constitution of India.

The goods sent to the Rig are stores not liable to pay customs duty.

12. In this behalf, the learned counsel for the petitioner at the cost of repetition tried to borrow further support from the ratio of Amerhsip Management (P) Ltd. and 9 ors. Vs. Union of India and Others, wherein it was held that any goods which are used in a vessel, including fuel and spare parts and other articles of equipment, would be covered by the word ''stores'' and that the petitioners in such cases are entitled to the benefit of Section 86(2) of the Customs Act, which inter alia, provides that any stores in a vessel may be transferred to any vessel as stores for consumption therein. In his submission. Oil Rigs are vessels for the purpose of Customs Act and the spare parts and equipments for the Oil Rigs are stores and should get benefit of Section 86(2) of the Customs Act.

13. The learned counsel for the petitioner further contends that Section 53 of the Customs Act inter alia provides that any goods imported in a conveyance and mentioned in the import manifest or the import report, as the case may be, as for transit in the same conveyance to any place outside India may be allowed to be so transited without payment of duty. The Rig carries on operations outside the territorial waters of India. When the Rig is carrying on operations, it is jacked up on four legs on the sea bed. During the time when it carries on operations supply vessels from the shore sail to the Rig and unload their cargo onto the Rig. Helicopters also land on the Rig. All these operations are carried out outside India. India is defined by Section 2(27) of the Customs Act, as including the territorial waters of India. The Rig, being outside the territorial waters of India, is a place outside India, within the meaning of Section 53 of the Customs Act and hence, the goods of the petitioner are entitled to be transited to the Rig without payment of duty u/s 53 of the Customs Act. He relied upon the judgment of Apex Court in Collector of Customs, Calcutta Vs. Sun Industries, wherein the words ''place outside India'' were interpreted to mean a place on the high seas beyond the territorial waters of India and prayed for benefit of the said judgment.

14. The learned counsel for the petitioner tried make out the above point even on the basis of alternate submission. He contends that the goods imported by

the petitioner are for consumption on the Rig. As the goods cannot land directly on the Rig, the goods land at the Mumbai airport/seaport or any other notified landing point and are thereafter transshipped to the Rig. Section 54(2) of the Customs Act inter alia provides that where any goods imported into a customs station are mentioned in the import manifest or the import report, as the case may be, as for transshipment to any place outside India, such goods may be allowed to be so transshipped without payment of duty. As such, the petitioner, in the premises, claims to be entitled to transship the goods to the Rig without payment of duty in pursuance of Section 54 of the Customs Act. He again tried to buttress his submission on the basis of the judgment of this Court in Amerhsip Management (P) Ltd. and 9 ors. Vs. Union of India and Others, wherein it was held that the petitioners therein were entitled to transship the goods without payment of custom duty. In his submission, the ratio of the judgment in Amership Management case (supra) would apply to the petitioner despite the subsequent amendment to the provisions of Section 54 of the Customs Act.

No import, hence, no question of customs duty.

15. In the submission of the petitioner, the goods imported by the petitioner for transfer to the Rig are meant for the specific purpose of being used and consumed on board the Rig, which operates on the high seas, outside the territorial waters of India. No bill of entry for home consumption is filed in respect of the goods. The import manifest, the bills of lading and other documents show the master of vessel i.e. the Rig as the consignee. Hence, the taxable event u/s 12 of the Customs Act, which is the charging section, does not take effect at all and no customs duty is leviable in respect of the goods. In support of this submission, the learned counsel for the petitioner relied upon the judgment of the Apex Court in the case of Garden Silk Mills Ltd. and Another Vs. Union of India and Others, and placed reliance on the observations of the Apex Court reading as :

".....the import of goods into India would commence when the same cross into the territorial waters but continues and is completed when the goods become part of the mass of goods within the country, the taxable event being reached at the time when the goods reach the customs barriers and the bills of entry for home consumption is filed."

16. In the alternative, the petitioner submits that Section 6 of Maritime Zones Act, 1976 defines the Continental Shelf of India. Section 7 defines the Exclusive Economic Zone of India means the areas specified therein beyond the territorial waters of India. The said sections inter alia empower the Central Government to declare any area within the Continental Shelf and the Exclusive Economic Zone to be designated area and make such provisions in respect thereof relating inter alia to custom matters. The notification issued by the Central Government u/s 5(6) of the Maritime Zones Act, 1976 does not, in any way, change the definition of the territorial waters. Consequently, even if a Rig operated within the said designated areas such a Rig continues to be a vessel operating outside the territorial waters

and is, thus, a foreign going vessel entitled to the benefit of non-payment of duty. The petitioner, lastly, submits that the impugned action on the part of the respondents seeking to collect custom duty is nothing but an attempt to impose unreasonable restriction on the petitioners right to carry on business and is violative of Article 91(1)(g) of the Constitution of India.

17. The learned counsel for the petitioner also contends that neither Article 1(3) of the Constitution of India nor the General Clauses Act refer to territorial waters of the land beneath the sea as being part of India. Thus India in its normal meaning refers to the landmass of India. He went to urge that Article 297 either as originally framed or as amended from time to time, does not of itself either extend the territory of India nor does it extend the laws of India to the areas comprising the territorial waters, Continental Shelf or the exclusive economic zone. It is further pertinent that the Parliament chose not to amend Article 1(3) at the time of the 2 Amendments to Article 297. Thus India means the territory of the landmass of India. The definition of "India" in Section 2(27) is an extensive definition i.e. it takes the normal meaning of the word India and extends it.

18. The petitioner on the aforesaid legal challenges prayed for directions to the respondents to forthwith permit clearance of the goods imported under transshipment permit without levy/recovery of duty of customs and sought clearance thereof with immediate effect free from the payment of duty.

Submissions of the respondents :

19. Per contra, the learned counsel appearing for the respondents submit that the contentions canvassed by the petitioner that the Oil Rig may come within the territorial limits of India or may visit designated area, yet it is a foreign going vessel is ambiguous and misleading. In his submission. Oil Rig is contractually required by the ONGC to be deployed in the designated area. He contends that that the Oil Rig has been deployed at the drilling locations located in the designated area only. He placed reliance on the notification dated 19th September, 1996 (Exh. B), which reads as under :

"the areas in the continental shelf or, as the case may be, in the exclusive economic zone of the India where the installations, structures and platforms, the coordinators of which are given in the schedule below, are situated and the areas extending up to five hundred meters from the said installations, structures and platforms as designated areas for the purposes of said section."

On the text of the submission, the contention is that the Oil Rigs are located in the designated areas only and that the Government, Ministry of Finance, Department of Revenue, New Delhi had published the Gazette of India extraordinary dated 1st December, 1997 notifying that the extensions of the Customs Act, 1962 and the Customs Tariff Act, 1975 to the designated areas in the Continental Shelf and Exclusive Economic Zone of India as declared by the notification of the Government of India in the Ministry of External Affairs No. S.O.

643(E), dated 19th September, 1996. He, therefore, submits that in terms of the said notification, the petitioner is legally liable to pay custom duty including what they call stores, brought to and utilised on the Oil Rig. in other words, the submission is that the notification referred to clearly lays down in unambiguous and unmistakable terms that the provisions of the Customs Act and Customs Tariffs Act are applicable to the designated areas i.e. wherein the Oil Rig has been deployed and whereupon the stores are brought in after landing in Mumbai and the petitioner is liable to pay custom duty on stores and other goods.

20. The learned counsel for the respondents submits that the ratio of the Amerhsip Management (P) Ltd. and 9 ors. Vs. Union of India and Others, cannot be made applicable to the facts of the present case. In his submission, the issue sought to be raised in the present petition was not the issue under consideration in that judgment. He therefore, submits that the question raised in the present petition should be decided independent of that judgment on its own merits.

21. The learned counsel appearing for the respondent also pressed into service the circular F. No. 450/85/92-CUS.IV, dated 29th September, 1994 issued by the Ministry of Finance, Central Board of Excise and Customs, New Delhi, which reads as under :

"I am directed to say that the question whether drilling rigs and equipments, their spare, components, etc. would be levied to customs duty when such goods are brought at sites located in the continental shelf and EE2 but outside the territorial waters of India and outside the designated areas notified by the Ministry of External Affairs (MRA), has been examined by the Board in consultation with the Law Ministry and MEA. Section 2 of the Customs Act, 1962 defines "India" to include only its territorial waters. A duty u/s 12 of the Customs Act, 1962 can be levied only if the goods are imported into India as envisaged in the said definition. We may be having sovereign rights over the said Continental Shelf of the Exclusive Economic Zone (EEZ) as declared In the Maritime Zones Act, 1976, but the provisions of Customs law would not become applicable to such areas unless the legislations are specifically made applicable to these areas as provided in the Maritime Zones Act, 1976. It has therefore, been observed by the Law Ministry that "bringing equipment from a foreign country for drilling oil at sites located within the (Exclusive Economic) Zone may not constitute ''import'' within the meaning of the provisions of the Customs Act, 1962 until the area where the equipments so brought is declared as a ''designated area'' under the Maritime Zones Act, 1976. It has been further opened that "if any area in the EEZ has not been so declared as a designated area, the provisions of the Customs Act, 1962 will not automatically apply to that area.

2. The effect of the aforesaid opinion of the Law Ministry is that if a drilling rig is brought from a foreign country to a place in the EEZ for exploration/exploitation of oil, it would not constitute import for the purpose of the Customs Act, 1962 and no duties can be levied for such cargo/equipments if such rigs operate in the zone outside the designated areas and beyond the territorial waters of India. It

would also follow therefrom that if any oil is generated at such drilling sites (non-designated and beyond the territorial waters) and such oil is brought to the India shores while no excise duty will be leviable on the production of this oil, such oil would be liable to pay the customs duty as if it has been imported into India."

He also pressed into service another Circular No. 28/95-F. No. 450/76/93-Cus-IV dated 27th March, 1995 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, New Delhi, which reads as under :

"Sub :-- Declaration of ONGC installations in Bombay High as Designated Area--regarding

The undersigned is directed to refer to Ministry''s instructions F. No. 450/65/92-Cus-IV, dated 28-9-1994 wherein the legal position regarding levy of customs duty on rigs brought in the designated area of the Exclusive Economic Zone and levy of excise duty on oil produced at such sites was clarified. The implication of these provisions is that any oil produced in the off-shore installations in the said designated area or within the territorial waters of India would be deemed to be produced in India and subject to the levy of Central Excise Duties u/s 3 of the Central Excises and Salt Act, 1944. In case, however, the oil is produced at such of the installations which have not been designated by the Ministry of External Affairs and which lie outside the territorial waters of India, such oil would be deemed to be Imported into India when this oil is transferred to the mainland and be subject to customs duties as specified in the Customs Tariff Act, 1975. The learned counsel for the respondents tried to build up the arguments on the basis of above two circulars to contend that the stores imported are liable to be levied by custom duty as per the Customs Tariff Act. On the aforesaid backdrop, the learned counsel appearing for the respondents prayed for dismissal of the petition with costs.

Petitioner''s arguments-in-reply :

22. The learned counsel appearing for the petitioner, in order to reply the aforesaid contentions, contends that the aforesaid two documents, namely, circulars issued by the Government represent the opinion of the Government of India on the interpretation of law. The said circulars do not have the force of law. In any event, the said circulars do not deal with the issue of ship stores used on Oil Rigs which are foreign going vessels. The circulars deal with levy of duty on the Oil Rigs themselves when the said Oil Rigs enter the designated areas with oil produced therein. In order to reiterate his earlier submission and to elaborate his argument he further contends that admittedly, the limits of territorial waters of India have not been altered by a Gazetted notifications. In absence of any Gazetted notification altering the limits of territorial waters, the said limits of territorial waters remain to be 12 nautical miles from the shore of India and cannot be said to have been extended by any deeming provision. He further submits that assuming that the designated areas become a deemed territory of

India, a deemed territory, created by a legal fiction cannot rank at par with an actual territory of India and could never become an actual territory of India or part of India. In any view of the matter, the designated areas are outside the territorial waters of India and, hence, petitioner''s-Oil Rig continues to be a foreign going vessel because even when the Oil Rig is engaged in operations in the designated areas, it is engaged in operations outside the territorial waters of India.

23. The learned counsel for the petitioner further contends that the Continental Shelf of India comprises the sea bed beyond the territorial waters up to a distance of 200 nautical miles. Based on Sections 6 and 7 of the Maritime Zones Act, 1976, he submits that in respect of Continental Shelf and Exclusive Economic Zone, India has only certain limited sovereign rights and do not make the Continental Shelf and Exclusive Economic Zone a part of India and cannot be equated to extending the sovereignty of India over the Continental Shelf and Exclusive Economic Zone as in the case of territorial waters. He sought to place reliance on the ratio of the judgment in Commissioner of Income Tax v. Ronalad William Tickard 1995 Tax LR 143. In the aforesaid premises, the petitioner prayed that rule be made absolute.

THE ISSUES

24. In the light of the aforesaid rival contentions, the following point arises for our consideration :

"Whether the Import of goods such as spares, spare parts, other equipments and fuel ("spares" for short) and transshipment thereof for being used on Oil Rigs carrying on operations in the designated areas be allowed to be consumed as stores thereon, without payment of customs duty, treating it as foreign going vessel?

THE STATUTORY PROVISIONS

25. Before proceeding to consider the rival contentions raised by the parties to the petition, it would be necessary to take survey of various relevant provisions of law in this regard.

(i) Article 1(3) of the Constitution of India provides that the territory of India shall comprise--

a) the territories of States :

b) the Union territories specified In the First Schedule; and

c) such other territories as may be acquired.

(ii) The relevant portion of Section 3(28) of the General Clauses Act provides :

"India" shall mean--

(a) and (b) .....

(c) as respects any period after the commencement of the Constitution all territories for the time being comprised in the territory of India.

Section 2(27) of the Customs Act defines India as under :

" "India" includes the territorial waters of India. This definition is relevant only for the purposes of the Customs Act.

(iii) Section 2(21) -- Foreign going vessel or aircraft means any vessel or aircraft engaged in 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) and (ii) .....

(iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever.

(iv) Section 2(28) of the Customs Act defines "Indian Customs Waters" means the waters extending into the sea up to the limit of contiguous zone of India u/s 5 of the Maritime Zones Act and includes any bay, gulf, harbour, creek, or tidal river.

(v) Section 53. Transit of goods in same vessel or aircraft

Subject to the provisions of Section 11, any goods imported in a vessel or aircraft and mentioned in the import manifest as for transit in the same vessel or aircraft to any port or airport outside India or any customs port or customs airport may be allowed to be so transited without payment of duty.

(vi) Section 54. Transhipment of goods without payment of duty.

(1) Where any goods Imported into a customs port or customs airport are intended for transhipment, a bill of transhipment shall be presented to the proper officer in the prescribed form.

(vii) Section 86. Transit and transhipment of stores

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

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

(viii) Section 87. Imported stores may be consumed on board a foreign going vessel or aircraft

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

(ix) Article 297 of the Constitution of India as originally enacted was as under :

Article 297: All lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purposes of the Union.

Article 297 was amended in 1963 to include the words "or the continental shelf after the words territorial waters.

Article 297 was again amended in 1976 to read as under :

Article 297 : Things of value within territorial waters or continental shelf and resources of the exclusive economic zone to vest in the Union :

(1) All lands, mineral land other things of value underlying the ocean within the territorial waters, or the continental shelf, or the exclusive economic zone, of India shall vest in the Union and be held for the purposes of the Union.

(2) All other resources of the exclusive economic zone of India shall also vest in the Union and be held for the purposes of the Union.

(3) The limits of the territorial waters, the continental shelf, the exclusive economic zone, and other maritime zones, of India shall be such as may be specified, from time to time, by or under any law made by Parliament,

(x) The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (Maritime Zones Act, 1976) was enacted to provide for certain matters relating to the territorial waters, continental shelf, exclusive economic zone and other maritime zones of India. It defines the territorial waters of India. The Maritime Zones Act, 1976 provides that the said Act is a sequel to the amendment to Article 297 and that it was in consonance with what has been accepted by the international community of States.

(xi) Section 3(2) defines the limit of territorial waters as the line every point of which is at a distance of twelve nautical miles from the nearest point of the appropriate base line. Section 3(3) authorises the Central Government to alter the limits of territorial waters.

(xii) Section 6 of the Maritime Zones Act, 1976 defines the Continental Shelf of India and Section 7 defines the Exclusive Economic Zone of India, Section 6(5) authorises the Central Government to declare any area on the continental shelf as "designated area." Similarly Section 7(6) authorises the Central Government to declare any area in the Exclusive Economic Zone as "designated area." The Central Government has further, by notifications to be issued u/s 6(6) of the Maritime Zones Act, 1976 to extend any enactment for the time being in force in India to the continental shelf of any designated area on the continental shelf. Similarly pursuant to Section 7(7) of the Maritime Zones Act, 1976 Central Government has to extend any enactment for the time being in force in India to the exclusive economic zone or any part thereof.

26. The relevant notifications issued under the Maritime Zones Act, 1976 are M.E.A. S.O. 429(E), dt. 18-7-1986 (effective since Jan, 15th, 1987) and S.O. No. 643(E), dt. 19-9-1996 which took immediate effect.

Jurisdiction of Customs Act.-- As per Notification No. 11/87-cus. dated 14-1-1987 the Customs Act extended to areas in the Continental Shelf and the Exclusive Economic Zone of India. The text of the notification is as under :

"In exercise of the powers conferred by Clause (a) of Sub-section (6), Clause (a) of Sub-section (7) of Section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1975), the Central Government hereby extends the Customs Act, 1962 (52 of 1962) and the Customs Tariff Act, 1975 (51 of 1975) to the designated areas in the Continental Shelf and the Exclusive Economic Zone of India as declared by the Notification of the Government of India in the Ministry of External Affairs S.O. No. 429(E), dated 18th July, 1986. with effect from 15th day of January, 1987."

The text of the Notification No. S.O.643(E), dated 19th September, 1996 is as under :

"G.S.R. 682(E) In exercise of the powers conferred by Clause (a) of Sub-section (6) of Section 6, and Clause (a) of Sub-section (7) of S, 7, of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976), the Central Government hereby further extends the Customs Act, 1962 (52 of 1962) and the Customs Tariff Act, 1975(51 of 1975) to the designated areas in the Continental Shelf and Exclusive Economic Zone of India as declared by the notification of the Government of India in the Ministry of External Affairs No. S.O. 643(E), dated 19th September, 1996 with immediate effect.

INTERNATIONAL COVENANTS AND PROVISIONS THEREOF :

In the Eleventh Session, on 30th April, 1982, conference adopted the draft Convention on the Law of Sea by the overwhelming majority of 159 States. The Convention on the Law of Sea known as United Nations Convention on the Law of Sea, 1982 has 320 Articles. They are divided into seventeen parts and nine annexures. It lays down rules for all parts and virtually all users of seas and oceans. The relevant clauses thereof are as under :--

Article 2. Legal status of the territorial sea, of the air space over the territorial sea and its bed and sub-soil.

1. The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an arch pelagic State, its arch pelagic waters, to an adjacent belt of sea, described as the territorial sea.

2. This sovereignty extends to the air space over the territorial sea as well as to its bed as sub-soil.

3. The sovereignty over the territorial sea is exercised subject to this Convention

and to other rules of international law.

Article 3. Breadth of the territorial sea.

Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.

Article 33. Contiguous zone.

1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to : (a) present infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea; (b) punish infringement of the above laws and regulations committed within its territory or territorial sea.

2. The contiguous zone may riot extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Article 55. Specific legal regime of the exclusive economic zone.

The exclusive economic zone is an area beyond an adjacent to the territorial sea, subject to the specific legal regime established in this part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.

Article 56. Rights, jurisdiction and duties of the coastal State in the exclusive economic zone.

1. In the exclusive economic zone, the coastal State has : (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea bed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to : (i) the establishment and use of artificial islands, installations and structures; (ii) marine scientific research; (iii) the protection and preservation of the marine environment; (c) other rights and duties provided for in this Convention,

2. In exercising its rights and performing its duties under this convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

3. The rights set out in this article with respect to the sea-bed and sub-soil shall be exercised in accordance with Part VI.

Article 57. Breadth of exclusive economic zone.

The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Article 127. Customs duties, taxes and other charges.

1. Traffic in transit shall not be subject to any customs duties, taxes or other charges except charges levied for specific services rendered in connection with such traffic.

2. Means of transport in transit and other facilities provided for an used by landlocked States shall not be subject to taxes or charges higher than those levied for the use of means of transport of the transit State.

CONSIDERATION/FINDINGS

27. The Customs Act is an Act to consolidate and amend the law relating to customs. Chapter V thereof deals with levy of and exemption from customs duty. Section 12 is the charging section. Under this section all the goods imported into India or exported from India are liable to customs duty unless the Customs Act itself or any other law for the time being in force provides otherwise.

28. In order to appreciate the contention raised in this petition, it is necessary to notice certain steps required to be taken under the Customs Act for levy of duty on goods imported into India. As stated above, Section 12 declares that the duty of customs shall be levied on all the goods imported into India. The goods imported are required to be valued u/s 14 and duty payable is required to be determined according to the rates specified u/s 15 of the Customs Act or any other law for the time being in force.

29. The other sections falling in Chapter V dealing with levy and exemption from customs duty need no detailed reference for the decision of this petition. Suffice it to say that the chargeability of the goods to the customs duty arises when the goods are imported into India.

30. In this case, it is not in dispute that the spares and ship stores are goods imported into India by the petitioner. The petitioner submits that in normal circumstances, such goods shall attract custom duty, but for the benefit of Section 53 read with Section 57 of the Customs Act, which the petitioner-company is claiming, on the contention that, the goods imported by them are spares meant or consumption on the Oil Rig, carrying on operations in the designated area, defined under the Maritime Zones Act, and that Section 86(2) Inter alia provides that any stores imported in a vessel or aircraft may with proper permission of the proper officer be transferred to any vessel as stores for consumption therein as provided in Section 87, which inter alia provides that Imported stores may, without payment of duty be consumed on the vessel as stores during the period such vessel is a foreign going vessel.

31. In order to appreciate the contention raised in this petition, it is necessary to notice a basic premise that under Customs Act goods entering into India becomes imported goods and chargeable to duty u/s 12, unless they are exempt

from payment of duty by virtue of some of the specific provisions. It is significant to note that ship stores or spares thereof are not exempted from the operation of Section 12, but by virtue of Section 53 of the Act are allowed to be transited without payment of duty. Similar provision is to be found in Section 54 in respect of the goods imported into a customs port or customs airport but is intended for transhipment of goods. Section 86(2) of the Act inter alia provides that any Imported stores may be transferred to any vessel as stores for consumption therein as provided in Section 87. Section 87 Inter alia provides that imported stores imported without payment of duty be consumed on the vessel as stores during the period such vessel is a foreign going vessel.

32. The applicability of above Section 86 read with Section 87 depend upon the answer to the question. Whether the ''Oil Rig'' operating in the ''designated area'' is a ''foreign going vessel''? Thus entire issue centres around the interpretation of Section 2(21) of the Customs Act, which defines the "foreign going vessel" to mean any vessel engaged in the carriage of goods or passengers between any port in India and any port outside India. It amongst others also includes any vessel engaged in fishing or any other operations outside territorial waters of India, or, any vessel proceeding to a place outside India for any purpose whatsoever. It needs to be noted that the Section 2 opens with the qualifying words: "unless the context otherwise requires." In our view, where the definition itself says that a particular word shall mean or particular word shall Include certain things and such a clause is preceded by expression "unless the context otherwise requires," it shall mean or Include all those things or situations, it is not open to the Court to give any other meaning to those words except when the context requires otherwise. The expression "unless the context otherwise requires" excludes all situations except those for compelling reasons the intended definition has to be abandoned. Section 2 directs that in this Act, "unless the context otherwise requires," words occurring in the Act shall be understood as defined therein unless for compelling reasons the Intended definitions need to be abandoned. In this backdrop, let us examine the length and breadth of the word "India" in the light of the provisions of law i.e. keeping in view the provisions of Customs Act read with Maritime Zones Act as the provisions thereof are applicable to the facts of the present case. u/s 2(27), ''India'' includes the territorial waters of India. Under the General Clauses Act, India is defined to mean all the territories for the time being comprised in the territory of India as defined in the Constitution of India. Article 1(3) of the Constitution of India States that the territory of India shall comprise of States and Union territories and such other territories as may be acquired. There is no reference to territorial waters in Article (1) of the Constitution. In other words, "India" commonly understood is the geographical entry comprising only of the land mass. For certain purpose the country referred to as "India" may extend into the sea up to the limit of "territorial waters" or "contiguous zone" or "continental shelf or "exclusive economic zone" or "other maritime zones."

33. Section 3(2) of the Maritime Zones Act, 1976 provides that a distance of 12

nautical miles from the nearest point of low tide along the baseline of India constitute territorial waters of India. Section 3(2) states that the sovereignty of India extends and has always extended to the territorial waters of India.

34. Section 4 has further made the position clear as to the use of its territorial waters by foreign ships i.e. all foreign ships (other than warships including submarine and under water vehicles) shall enjoy the right of Innocent passage through the territorial waters. Passage shall be innocent so long as it is not prejudicial to the peace, good order or security of India. Section 5 of the Act envisages that contiguous zone of India is that part of the sea which is beyond and adjacent, to the territorial waters and the zone extends to a line which is twenty four nautical miles of the coast. This section specifically recognises the competence of the Central Government to exercise such powers and take such measures as to consider necessary with respect to (a) the security of India, and (b) immigration, sanitation, customs and other fiscal matters.

35. u/s 6(1) of the said Act, the continental shelf of India extends to a distance of 200 nautical miles from the baseline referred to in Sub-section (2) of Section 3 where the outer edge of the continental margin does not extend up to that distance. Section 6(2) describes the sovereign rights of India, in respect of its continental shelf. Section 6(6) enables the Central Government by notification in the Official Gazette to extend, with such restriction and modifications as it thinks fit, any enactment for the time being in force in India or any part thereof to the continental shelf or any part thereof.

36. Section 7(1) describes the exclusive economic zones of India as an area beyond and adjacent to the territorial waters and the limit of such zone is 200 nautical miles from the baseline referred to in Sub-section (2) of Section 3. u/s 7(7), the Central Government may, by a notification in the Official Gazette, extend, with such restrictions and modifications as it thinks fit, any enactment for the time being in force in India or any part thereof to the exclusive economic zone or any part thereof. A careful reading of Sections 3, 6 and 7 of the Maritime Zones Act shows that territorial waters, the sea bed and subsoil underlying therein and the air space over such territorial waters from part of the territory of India and that the sovereignty of India extends over such areas. However, the position is different in the case of the continental shelf and exclusive economic zone of India. The continental shelf of India comprises the sea bed beyond the territorial waters to a distance of 200 nautical miles. The exclusive economic zone represents the sea or waters over the continental shelf. It is also clear from Sections 6 and 7 of the Maritime Zones Act, 1976 that in respect of the continental shelf and exclusive economic zone. India has been given only certain limited sovereign rights and such limited sovereign rights conferred on India in respect of continental shelf and exclusive economic zone do not make the continental shelf and exclusive economic zone part of India and the limited sovereign rights conferred on India in respect of the continental shelf and the exclusive economic zone cannot be equated to extending the sovereignty of India

over the continental shelf and exclusive economic zone as in the case of territorial waters. However, subsection (6) of Section 6 and Sub-section (7) of Section 7 of the Act empower the Central Government by notification to extend any enactment in force in India with such restrictions and modifications as it thinks fit to the continental shelf and the exclusive economic zone and further provide that an enactment so extended shall have effect as if the continental shelf or the exclusive economic zone to which the enactment has been extended is a part of the territory of India. Thus Sections 6(6) and 7(7) create a fiction by which, the continental shelf and the exclusive economic zone are to be deemed to be a part of India for the purposes of such enactments which are extended to those areas by the Central Government by notification in the Official Gazette.

37. In exercise of the powers vested in the Central Government under the aforesaid sections of the Maritime Zones Act, 1976, the Government extended the Customs Act, 1962 and the Customs Tariff Act, 1975 to the designated areas of the continental shelf and the exclusive economic zone by notifications published in the official gazette referred to and reproduced in paragraph 26 (supra).

38. At this juncture, it will be profitable to note that the Indian position is consistent with the mandate of international law United Nations Convention on the Law of the Sea 1982 ("UNCLOS, 1982" for short) dated 7th October, 1982 which has been signed by India as a member of the United Nations, the territorial sovereignty of the coastal State extends beyond the land territory only up to the outer limits of the territories sea (the equivalent expression in our 1976 Act is "territorial waters") which is 12 nautical miles from the low water mark line of the coast (base line) which is consistent with the UNCLOS, 1982. India''s customs waters (see Section 2(28) of the Customs Act) extend sea ward up to the outer limit of the contiguous zone, namely a jurisdictional zone adjoining the territorial sea and encompassing the stretch of sea waters up to a distance of 12 nautical miles beyond the territorial sea. The coastal State has no sovereignty in the territorial sense of dominium over this zone, but it exercises sovereign rights for the purpose of exploring (continental shelf) and exploiting its natural resources. It has jurisdiction to enforce its fiscal, revenue and penal laws in this zone which it may exercise by intercepting vessels engaged in suspected smuggling or the other illegal activities attributable to a violation of the above laws of the coastal state.

39. The waters which extend beyond the contiguous zone are traditionally the domain of the high seas or open sea which have, juristically speaking, the status of international waters where all states enjoy the traditional high seas freedom including freedom of navigation. While in the contiguous zone the coastal state can exercise its right of search, seizure or confiscation of vessel for violation of its customs or fiscal or penal laws, it cannot-exercise these rights once the delinquent vessel enters the high seas for no right of hot pursuit is recognised in this area under the traditional law of the sea. Only vessel engaged in piratical

acts are liable for capture, arrest and condemnation within area for the Jurisdiction over piracy since historical times has been recognised as universal in International law and any state may exercise that jurisdiction over a pirate irrespective of the usual considerations of territoriality which limit penal jurisdiction.

40. However, with the adoption of the UNCLOS 1982 the legal incidents of the high seas have been partly modified consequent on the introduction of a new economic resources zone over the maritime space up to 200 miles from the coastal base line called "exclusive economic zone", and on redefining and clarifying the legal status of the continental shelf. The UNCLOS 1982 is a comprehensive Code on the international law of the sea. While codifying and consolidating the traditional law within a single, edificatory legal frame work, it has made significant changes in the legal concept of continental shelf and also introduced a new maritime zone known as the exclusive economic zone. Partly the exclusive economic zone concept is a refinement and advancement over the traditional exclusive fishing zone which coastal states had unilaterally established through national legislation subject to historic rights as to fishing which non-coastal stages may have in the area over an area of the sea up to fifty miles from the base line. But the exclusive economic zone is a radically new concept with several novel features. But what Is significant for our purpose is that the coastal state has in this zone only sovereign rights of exploitation of the resources of the zone and not sovereignty in the sense of territorially or dominium. Exclusiveness attaches to resources exploitation only but does not incorporate the notion of reducing the area to the exclusive ownership or title of the coastal state. It is a resources linked concept of sovereignty in a restricted sense sans the incidents of territoriality. This is because, in other respects, the status of the waters in this area as part of the high seas is specifically recognised and retained in the convention.

41. In the exclusive economic zone, the coastal state has exclusive right to exploit for economic purposes like constructing artificial islands or oil platforms or drilling rigs for oil and mineral exploration and other purposes like fishing scientific research etc. but this is subject to the navigation and over freight rights of non-coastal states.

42. Be that as it may, by virtue of Section 7 of the Territorial Waters etc. Act, 1976 Parliamentary enactments which are extended to notified areas comprised in the exclusive economic zone or continental shelf have effect as if the exclusive economic zone area/or the continental shelf area is a part of the territory of India. In this sense, India, for the purposes of the Customs Act, 1962 includes not only the territorial waters, but the areas of the exclusive economic zone over which the operation of the Act has been extended by reason of the notification adverted to above. The Territorial Waters legislation is a Special Maritime Zones Act and it prevails in the event of conflict with the provisions of or where the Customs Act, 1962 is silent in regard to a particular matter. In any case. Section

2(27) of the Customs Act does not explicitly exclude waters beyond the territorial waters from being part of India and therefore, the said subsection will have to be interpreted taking into account the above factors including the aforesaid notifications issued by the Central Government.

43. We have discussed the scope and ambit or Maritime Zones Act, 1976. However, at the cost of repetition, we may once again state that by virtue of Section 7 of the said Maritime Zones Act, 1976 Customs Act has been extended to notified areas in the Exclusive Economic Zone/Continental Shelf. By a deeming fiction, the said areas form part of the territory of India mainly for fiscal purposes. This is the underlying Scheme of Section 7 of the Maritime Zones Act, 1976. Therefore, one has to read the Maritime Zones Act. 1976 with the Customs Act, 1962 to decide the points arising in this petition. Section 2(27) defines "India" to include the territorial waters of India. It is an inclusive section. Section 2(15) defines the word "duty" to mean duty of customs leviable under the Customs Act. Section 2(23) defines the word "import" to mean bringing into India from a place outside India. Section 2(25) defines the expression "imported goods" to mean goods brought into India from a place outside India, but does not include goods cleared for home consumption. Section 12 of the Customs Act is the charging section. It falls in Chapter V. It indicates eligibility of the goods imported into India to tax at rates as may be specified under the Customs Tariff Act or any other law for the time being in force. It is well settled that the concept of chargeability is different from the concept of assessment of quantification of the amount payable by way of customs duty. The only charging section for levy of customs duty is Section 12. However, when one comes to assessment or quantification of the amount payable then Sections 14 and 15 come into play. Therefore, one will have to look at Section 12 for the purposes of determining the duty chargeable. The taxable event, therefore, occurs the moment the goods enter the territorial waters of India. Section 53 of the Customs Act refers to transit of goods without payment of duty. It comes in Chapter VIII, which deals with goods in transit. Section 53 of the Customs Act, inter alia, lays down that any goods imported for transit to any place outside India will not be liable to payment of customs duty. Therefore, reading Section 12 with Section 53, it is clear that although entry into territorial waters amounts to import, in case of transit of goods to any place outside India would not be liable to payment of customs duty. In other words, although the goods are chargeable, they are not liable to payment of customs duty because of Section 53 of the Customs Act. Therefore, when the goods enter the territorial waters, there is import but the object of the customs duty is not to levy tax on goods in transit to any place outside India. For the purposes of this case, the words "to any place outside India" are very import. The word "transit", therefore, presupposes that the goods can pass through territorial waters to any place outside India. Now, in the present case, if one reads the Customs Act without reading the Maritime Zones Act, 1976 then the Oil Rigs located in the notified areas/designated areas constitute "place outside India" thereby transit of goods to Oil Rigs would fall

within Section 53 of the Customs Act. On the other hand, the very purpose of Sections 5, 6 and 7 of the Maritime Zones Act, 1976 is to declare an area of the contiguous zone/continental shelf/economic zone as a designated area so that exploration, exploitation and protection of resources belonging to India could be carried out. Under the said Act, the Central Government can create Artificial Island, Off-shore Terminals, etc. By the said Act, customs and other fiscal enactments have been extended. Therefore, the object is very clear that the revenue generated from exploration and exploitation should accrue to the coastal State viz. India. It is for this reason that a Financial Memorandum is attached to the Territorial Waters Bill, which indicates that the Central Government is authorised to spend money for regulation, exploration and exploitation of resources within the designated area. Taking into account the object of the said Act, 1976, it is clear that the Parliament has sought to extend the Customs Act to such designated areas. That, without the provisions of the Maritime Zones Act, 1976 and on bare reading of the Customs Act alone the goods imported to the Oil Rigs in the designated area would have attracted Section 53 of the Customs Act in which event the liability to pay customs duty would not have accrued. In fact, it is the basic argument of the petitioner. However, one cannot ignore the provisions of the Maritime Zones Act, 1976. Reading the two Acts together, we are of the view that the subject goods sent to the Oil Rigs do attract Section 12 of the Customs Act and that they do not constitute goods in transit u/s 53 of the Customs Act. When the subject goods entered the territorial waters. Section 12 is attracted. However, the petitioners filed their Bill of Entry/Import Manifest on the footing that they were the goods in transit to a place outside India. The petitioners, therefore, relied upon Sections 53 and 54 of the Customs Act. However, for the reasons mentioned by us hereinabove, the goods are meant for Oil Rigs in the designated area under the Maritime Zones Act, 1976 and, therefore, the provisions of Sections 12, 14 and 15 of the Customs Act, would apply to the subject goods. In other words, the subject goods are not the goods in transit.

44. The point at issue in this case did not arise for determination before the Division Bench in the case of Amerhsip Management (P) Ltd. and 9 ors. Vs. Union of India and Others, .

45. Now turning to the Division Bench Judgment in case of Amership Management (supra), we must say that the Division Bench was concerned with the limited question as to whether Oil Rigs are vessel and if so a foreign going vessel in the light of the controversy raised in that judgment. Relying on the International Load Lines Convention 1966 and Central Government notifications and upon the load lines certificates the Division Bench held that for the purposes of the Customs Act the expression "vessel" is of the widest amplitude and must be construed to include "oil rigs". The Division Bench reasoned that since the oil rigs are stationed beyond the territorial waters of India, they would be considered as foreign going vessels engaged in other operations outside the territorial waters of India (see Section 2(21)(ii)). Consequently, the Division

Bench held that supply of imported "stores" to the oil rigs stationed outside the territorial waters would qualify for exemption from duty u/s 86 without being required to be warehoused. No question was raised before the Division Bench with respect to bearing of explanation to Sections 6 and 7 of the Maritime Zones Act together with notifications issued pursuant thereto on the meaning and interpretation of Section 2(27) of the Customs Act while interpreting the meaning of expression "foreign going vessel" in the context of Section 2(21) or the word "Import" u/s 2(22) read with Section 2(23) of the Customs Act. However, the said question is squarely raised in this petition.

46. In our opinion, if the area of the exclusive economic zone or Continental Shelf, where the rigs are stationed (of course outside territorial waters) is deemed to be a part of the territory of India under the Central Government notifications issued pursuant to the provisions of the Territorial Waters Act, then the supply of imported spares or goods or equipments to the rigs by a ship will attract import duty and the ship employed for transhipment of the goods for that purpose would not be a foreign going vessel u/s 2(21) of the Act since the area of discharge or unloading/loading is within India by virtue of the deeming provisions of Sections 6 and 7 and consequent explanations of the Maritime Zones Act. In order to support our view, we borrow support from the Division Bench judgment of this Court in the case of Salgaocar Engineers Private Ltd. Vs. Shri O.J.F. Gomes, Asst. Collector of Customs, wherein it was observed as under :

". . . . .In our view by reason of Section 2(21) only that vessel that is actually carrying at a given point of time goods or passengers between a port in India and a port outside is a foreign going vessel. ....."

47. In the aforesaid backdrop, having reached to the conclusion that the Oil Rig carrying on operation in the designated area is not a foreign going vessel as per the provisions of the Customs Act, extended by virtue of provisions of the Maritime Zones Act to the designated areas as it would be deemed to be a part of Indian territory, the coastal State has sovereignty over the territorial sea. It can exercise jurisdiction over this part of sea. Contiguous zone is that part of the sea which is beyond and adjacent to the territorial waters of the coastal States. The coastal States though do not exercise sovereignty over this part of the sea, however, they are entitled to exercise sovereign rights and can take appropriate action to protect its revenue and like matters. In other words, police and revenue jurisdiction of the coastal States extend to the contiguous zone.

48. In support of our view we also propose to refer to the mandate of international law which in this case does not go contrary to any part of our municipal law. Geneva Convention on Contiguous Zone of 1958 had also recognised this right of the coastal States under Article 24, Para I which says that the coastal States may exercise the control necessary to (a) prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea; (b) punish Infringement of the above regulations committed within the territory or territorial sea. The UNCLOS of 1982 has also

made similar provisions under Article 33. As per the said convention the exclusive economic zone and the contiguous zone are no longer described as being a part of the high seas.

49. Article 127 UNCLOS of 1982 deals with Customs duties, taxes and other charges. Clause (1) thereof provides that traffic in transit shall not be subject to any customs duties, taxes or other charges except charges levied for specific services rendered in connection with such traffic; whereas Clause (2) provides that means of transport in transit and other facilities provided for and used by the land locked States shall not be subject to taxes or charges higher than those levied for the use of means of transport: of the transit State.

50. This article provides that where the goods are in transit to other country shall not be subject to any customs duties, taxes or other charges except for the charges levied for the specific services in connection with such traffic. In other words, there is no prohibition for levying customs duties on the goods which are not in transit for onward transmission to any other country. If the goods are brought in only while proceeding to other country, then no customs duty can be levied. In all other cases it seems to be permissible.

51. The question is whether the Courts can look into the provisions of these treaties/conventions. We need not debate much on the Issue as the Apex Court has in so many words now said that even though there is no municipal law, the same can be looked into and be enforced and if they are not in conflict with municipal law then the same not only can be looked into but can be used to interpret municipal laws so as to bring them in consonance with international law. In case of Gramophone Company of India Ltd. Vs. Birendra Bahadur Pandey and Others, the issue arose of transit of goods from India to Nepal pursuant to treaty between India and Nepal providing a corridor transport of goods. Various municipal Acts were under consideration along with the treaty between the two countries and International convention. The Court posed two questions (1) Whether the International law is, of its own force, drawn into the law of the land without the aid of the Municipal Statute? (2) Whether so drawn, it overrides municipal law in case of conflict. The Apex Court relied on various international covenants as well as the law as expanded by other national Courts. The Apex Court then proceeded to answer the question as under (Para 5) :

"There can be no question that nations must march with the International community and the Municipal law must respect rules of International Law even as nations respect international opinion. The comity of Nations requires that Rules of International law may be accommodated in the Municipal Law even without express legislative sanction provided they do not run into conflict with Acts of Parliament. ....."

However, in the event where they do run into such conflict, the sovereignty and the Integrity of the republic and the supremacy of the constituted legislatures in making the laws may not be subject to external rules except to the extent legitimately accepted by the constituted legislatures themselves. The Apex Court went on to observe as under (Para 5):

" ..... The doctrine of incorporation also recognises the position that the rules of international law are incorporated into national law and considered to be part of the national law, unless they are in conflict with an Act or Parliament. Comity of nations or no. Municipal Law must prevail in case of conflict. National Courts cannot say "yes" if Parliament has aid no to a principle of international law. National Courts will endorse international law but not if it conflicts with national law. National Courts being organs of the National State and not organs of international law must perforce apply national law if international law conflicts with it. But the Courts are under an obligation within legitimate limits, to so Interpret the Municipal Statute as to avoid confrontation with the comity of Nations or the well established principles of International law. But if conflict is inevitable, the latter must yield."

52. In the case of Vishaka and others Vs. State of Rajasthan and Others, , the question before the Apex Court was as to what would be the position in law if there was no law for effective enforcement. The Apex Court observed as under :--

"International convention and norms are to be read into them in the absence of enacted domestic law complying the field when there is no inconsistency between them. It is now an accepted rule of Judicial construction that regard must be had to the international conventions and norms for construing domestic law when there is no inconsistency between them."

Thus keeping in view the above law laid down by the Apex Court, the Customs Act must be so interpreted as to be consistent with international convention to which India is a party. Accordingly, we hold that the designated area is a part of India for the purposes of Maritime Zones Act by which the Customs Act was extended to that area and the vessel engaged during the operation in the exclusive economic zones (beyond territorial waters of India) is not a foreign going vessel, entitled to claim benefit of Section 86 read with Section 87 of the Customs Act,

53. For all the reasons stated above, we are of the view that the respondents are perfectly Justified in refusing to permit the petitioner to clear, ship stores and spares for use on the Oil Rig, on transhipment permit and without payment of customs duty while the Oil Rig is In a designated area. We also hold that the continental shelf land the exclusive economic zone are the parts of India in view of the provisions of Sections 6(6) and 7(7) of the Maritime Zones Act and for the purposes thereof and pursuant to notifications referred to in para 26 (supra) the provisions of the Customs Act, 1982 were extended to such areas, consequently, the Oil Rigs proceeding to such areas or operating therein are not foreign going vessels u/s 2(21) of the Customs Act. If that is so, the petitioner is not entitled to the benefit of Section 53 read with 54 and/ or of Section 86 r/w. 87 of the Customs Act. In view of our view, the petition must fail,

54. Accordingly petition is dismissed. Rule is discharged with no order as to costs.

55. Needless to mention that the bonds executed by the petitioner from time to time for obtaining clearances of goods/stores without payment of customs duty are liable to be enforced and the respondents shall be at liberty to enforce the same so as to recover the customs duty as may be recoverable from the petitioner and the petitioner shall be duty bound to remit the amount of customs duty within 60 days from today failing which the respondents shall be free to take appropriate coercive steps for recovery thereof.

