(1996) 08 SC CK 0033

In the Supreme Court Of India

Case No : Civil Appeal No''s. 1502-1504 and 1752-53 of 1984, 3409 of 1987, 966 of 1990 and 876 of 1991

Shantilal Khushaldass and Bros. Pvt. Ltd. and Another — APPELLANT

Vs

Assistant Collector of Customs, Goa — RESPONDENT

Date of Decision : 14-08-1996

Acts Referred:

Citation : (1997) 94 ELT 472 : (1998) 7 JT 229 : (1998) 9 SCC 180

Hon'ble Judges : S. P. Bharucha, J;S. C. Sen, J

Bench : Division Bench

Judgement

1. These appeals relate to what are called Tran shippers and would stand covered in favour of the Customs authorities by the judgment of a Bench of two learned Judges of this Court, in Chowgule & Co. (P) Ltd. v. Union of India but for the argument advanced on behalf of the owners of the Tran shippers that the judgment requires consideration.

2. The Division Bench said:

"14. The further question is whether the vessels which have been converted into Tran shippers to be used in Indian territorial waters for topping up bulk carriers, can be said to be vessels for home consumption merely on that account, even though when they entered Indian territorial waters they came under their own power as ocean-going vessels and notwithstanding that they are still capable of being used as ocean-going vessels and are in fact so used during the off-season when it is not practicable to do topping-up operations and, for that matter, even during the fair season when they have necessarily to go into the open sea to go alongside the bulk carriers in open anchorages. In both the cases before us there can be no doubt that the vessels are not only capable of being used but are used as cargo ships to carry cargo from one Indian port to another or sometimes to foreign ports, necessarily going out on the high seas. They are structurally and technically competent to go on the high seas and they have been certified to be so competent by appropriate maritime authorities. Instead of remaining idle and getting rusty, during off-season, that is when because of inclement monsoon weather topping-up operations cannot be done in Mormugao harbour, the vessels do go out into the open sea sometimes from one Indian port to another and at other times to foreign ports. Of course, even in the course of topping-up operations during the fair season, it is necessary for the Tran shippers to go into the open sea to reach the bulk earners. But, in our view, these operations do not make these vessels ocean-going vessels when their primary purpose and the purpose for which they were permitted to be purchased and brought to Indian waters, the primary purpose for which they were licensed and the primary purpose for which they are used is to conduct topping-up operations in Indian territorial waters and not to serve as ocean-going vessels."

3. Learned counsel for the owners submitted that the term "ocean-going vessel" or "sea-going vessel" was a term of art whose meaning was clear and well known. The Court had recognised the fact that the Tran shippers were ocean-going vessels in that sense, but had declined to give them the benefit of the notification that exempted ocean-going vessels from customs duty on the basis that their dominant purpose was not for ocean-going. Learned counsel submitted that the meaning of the term, "ocean-going" being clear, it was not open to the Court to go into the use to which the Tran shippers were put. In this behalf, learned counsel relied upon the judgments of two Benches of three learned Judges of this Court, in Dunlop India Ltd. v. Union of India and Indian Aluminium Cables Ltd. v. Union of India . Learned counsel also drew attention to the fact that the judgment took note that even during their day-to-day operations the Tran shippers went out into the open sea and that during the monsoon they sailed to other ports, either in India or abroad, so that they were put to ocean-going use.

4. Learned counsel for the Customs authorities submitted, on the other hand, that the phrase ocean-going vessel itself took into account the end-purpose. In other words, the exemption notification applied to vessels which actually went out into the ocean. He submitted that, therefore, the test laid down in the two judgments cited above was met.

5. In our view, there is, prima facie, merit in the submissions on behalf of the owners that an ocean-going vessel is a vessel equipped, crewed and licensed to go out into the ocean, regardless of whether or not it actually does, and that the Tran shippers, as shown by the record, are such vessels; also, they do, in fact go out into the ocean on their day-to-day business to load ore and, in the monsoon, to carry cargo to or seek refuge in other Indian or foreign ports. The judgment in Chowgule & Co. (P) Ltd. v. Union of India (Supra) requires the consideration of a Bench of three learned Judges both on the question of the relevance of end-use and on the question whether, in any event, the end-use requirement is satisfied.

6. The appeals shall be placed before the Hon''ble the Chief Justice for appropriate directions.