

(1982) 03 KL CK 0021

In the High Court Of Kerala

Case No : O.P. No's. 404, 409, 410, 413, 517, 519, 736 and 928 of 1979

Shri Ramlinga Mills Private Ltd. and Others

APPELLANT

Vs

Assistant Collector of Customs and Another

RESPONDENT

Date of Decision : 01-03-1982

Acts Referred:

Constitution of India, 1950 — Article 246
Customs Act, 1962 — Section 111, 12, 15, 15(1), 2(11)
Finance Act, 1976 — Section 32(1)
Tariff Act, 1934 — Section 2A
Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 — Section 5

Citation : (1989) 22 ECR 36 : (1983) 12 ELT 65

Hon'ble Judges : K. Sukumaran, J

Bench : Single Bench

Advocate : Parasaran V. Bhaskaran Nambiar, C.R. Natarajan, M.K. Anandakrishnan, R. Bhaskaran, T.C. Mohandas, S. Easwara Iyer and E. Subramoni, for the Appellant; T.R.G. Warriar, V.R Venkitakrishnan and P.C. Chacko, for the Respondent

Final Decision : Dismissed

Judgement

K. Sukumaran, J.—A question of nicety concerning levy of import duty arises in this batch of writ petitions filed by Textile Mill Owners engaged in the manufacture of cotton viscose blended yarn. Though the question is a nice and subtle one, it is not entirely one of prima impressionis. It is, therefore, perhaps unnecessary to say, as did that inimitable Dickensian character, Mr. Pickwick, with charitable impulse : "...I leave to wiser heads than mine to determine".

2. Developed maritime countries of importance had had similar and allied problems. Law and literature of such countries abound in expositions and experiences in respect of exports-imports activities, and even smuggling in the goods. The great English poet Crabbe, whose father was a Customs Officer in Suffolk in the eighteenth-century heyday of smuggling, described how smugglers

stood by the seashore :

"Beneath yon cliff they stand,

To show the freighted pinnacle where to land;

To load the ready stood with guilty haste;

To fly in terror o'er the pathless waste;"

These lines were quoted by Mr. Williams in his book "Contraband Cargoes, Seven Centuries of Smuggling". Bacon and Blackstone, Trevelyan and Pike have all dealt with "the habits and happenings that in the eighteenth and early nineteenth centuries that lie behind the laws against smuggling" presenting "a familiar and romantic chapter of social history". Dr. Johnson described a smuggler as "a wretch who, in defiance of justice and the laws, imports or exports goods either contraband or without payment of the customs. (See generally the comments in *Forbes v. Traders Finance Corp'n. Ltd.*, (1971) 45 A.L.J.R. 668. The legal principles in relation to various facts of these transactions are gatherable from judicial decisions rendered in such jurisdictions. Those principles may illumine the twilight area yet unlit by decisions of the Supreme Court of India. With this prefatory note, the facts of the case, the question posed for consideration, the discussion thereon and the ultimate conclusion may be attempted.

3. As for facts, they are neither too many nor too complicated.

4. As stated earlier, the petitioners are producing, among other goods, cotton viscose blended yarn. This requires viscose staple fibre. This material is imported in large quantities from foreign countries. Imports of this material appears to be permitted under the open general licence. The country of origin of the goods as regards the cases in hand is Norway. Steamer "Vishva Bandhan" carried the goods from Sarpsborg Port in Norway.

5. The import of goods into India is subjected to duty under various fiscal measures. The Customs Tariff Act, 1975 (Act 51 of 1975), the Finance Act of 1976 are some of the relevant enactments. The levy is made, assessed and collected under the provisions of the aforesaid enactments read with the Customs Act, 1962 (Act 52 of 1962).

6. Section 25 of the Customs Act confers power on the Government in public interest to exempt by notifications in that behalf, duty leviable on the goods. In respect of viscose staple fibre this power was exercised by the Government of India. Notification Nos. 384 and 385 (Customs), dated 23-7-1976 thus exempted the goods from duty of customs leviable under the first schedule as also the whole of the additional duty u/s 2A of the Indian Tariff Act. Exemption in respect of auxiliary duty of customs leviable u/s 32(1) of the Finance Act was granted by the second notification. These notifications have been produced as Ext. P2 in O.P. No. 404 of 1979. The period of exemption was to enure until 31st March, 1977.

This was, however, extended by subsequent notifications, evidenced from Ext. P1 public notice. The extended period was to end on 31-12-1978 (vide Exts. P1 and P3). For reasons not known but which turned out to have unfortunate consequences on the petitioners, there happened a time lag before the Government of India felt further about the necessity for extending the exemption till 31-12-1979. Though the exemption was ultimately extended under Ext. P4 notification, it had effect only from 5-1-1979, the date of that notification and the date of intended publication in the Gazette, Extraordinary, of the Government of India.

7. The vessel with viscose staple fibre reached Cochin after 31-12-1978 but before 5-1-1979. It reached at a time when the old notification was dead and the new was yet unborn. If these were the only facts, the query, whether the goods which reached the Port of destination crossing the customs barriers only after 31-12-1978 and well before 5-1-1979 are exigible to duty, could have been easily answered. Indubitably they would be, the exemption not being available. However, the vessel due to reasons unknown and perhaps irrelevant as regards the cases, had reached Bombay even as early as on 28-12-1978. Obviously it had been in the territorial waters of India and further inward; the ship had crossed, and with her the goods in question the customs barriers of the Bombay Port. She stayed secure in that Port for a few days before she set sail again and reached Cochin on 4-1-1979.

8. It appears that the petitioners had expected the arrival of the ship much earlier. On that expectation, the Bill of Entry was submitted even on 21-12-1978, indicating the date of arrival of the vessel at Cochin as 25-12-1978. These facts, namely, the entry of the vessel in the territorial waters of India around Bombay Port at about 28th of December, 1978 and the submission of the Bill of Entry to the Import Department at Cochin on 21-12-1978 by the clearing agents of the petitioners, have been clutched upon by the petitioners as circumstances entitling them to the exemption of the earlier notification which expired only on 31-12-1978. The dutiable event under the relevant enactments, is the import of the goods into India. And when does "import" take place ? Look at the definition of Section 2(23) of the Customs Act, where that term is defined as "bringing into India from a place outside India". India too is defined in Section 2(27); its inclusive portion is of particular significance. The definition runs :

"India" includes the territorial waters of India".

The act of importation was thus complete when the vessel entered the territorial waters around Bombay; and at any rate when it was berthed in that Port. . Import was thus complete latest by the 28th of December, 1978. That was at a time when the exemption notification was in full force and effect. So viewed, at the time relevant for the chargeability for duty, the exemption was available. The goods thus having earned exemption cannot be subjected to a duty by a subsequent sailing of the vessel from Bombay to Cochin ...so runs the argument of the petitioners in these cases.

9. This argument, understandably enough, did not appeal to the departmental authorities. Duties were imposed (and the amounts are substantial) by the impugned orders and recovery steps were rigorously pursued. The writ petitions were then filed in this court, and were entertained in view of the importance of the questions involved and the immediacy of relief (atleast Interim relief) required by the petitioners.

10. Is the importation really complete when the vessel crossed the territorial waters around Bombay or was berthed in that Port, although the importer intended the Port of destination as Cochin and every other attending act connected with the import was to be performed in Cochin ? That is the problem posed for decision.

11. The term "import" derived from the Latin word "importare", lexicologically does not have reference to goods in transit; it generally contemplates "pause and repose of goods". In a given context, and for understandable reasons, however, the statutory scheme may sanction a wider meaning to that term. It has been said that the test is the intention with which the goods were brought in. Chief Justice Marshall said in *Browne v. State of Maryland*, 6 Law Edn. 678, that "sale is the subject of importation and is an essential ingredient of that intercourse of which importation constitutes a part".

12. Judicial decisions have, as stated earlier, considered and construed the term under different contexts. It is but natural that observations in such decisions with emphasis on a particular facet relevant for that decision may be apt and correct viewed from the factual matrix of the particular case so decided. If, however, divorced from the factual considerations, undue emphasis is given to any particular observation, it may obfuscate the observation and even distort the concept, as it happened to the six blind men while they examined with the elephant. Learned men in law have, therefore, cautioned about the application of the principles discernible from decided cases with care and caution. That has become all the more necessary in the present case as many have been cited at the Bar; and some have come to my notice, after the cases had been reserved for judgment. I shall, therefore, endeavour briefly to allude to the relevant statutory provisions and the decided cases helpful for resolving the controversy.

13. Before referring to the statutory provisions, it may be of advantage to bear in mind the salient provisions in the Constitution itself. Entry 41 of List 1 of the Seventh Schedule deals with: "Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers". Entry 83 refers to "duties of customs including export duties". Parliament under Article 246 has exclusive power to make laws with respect to these Entries in List I. The Customs Act, 1962, the Indian Tariff Act, 1934, the Customs Tariff Act, 1975 and the Finance Act of 1976 are all legislative exercises which, trace the source of power, among other things, on these Entries read with Article 246 of the Constitution. In addition to the terms, the "import" and "India", the definitions of which have been already alluded to, it will be profitable to refer to

the definitions of the terms "customs area", "customs port", "customs station" and "Indian customs waters" occurring in Sub-sections (11), (12), (13) and (28) of Section 2 of the Act. They read as follows :

"2. Definitions.-In this Act, unless the context otherwise requires,-

* * * * (11) "customs area" means any area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by customs authorities;

(12) "customs port" means any port appointed under Clause. (a) of Section 7 to be a customs port;

(13) "customs station" means any customs port, customs airport or land customs station;

* * * * (28) "Indian customs waters" means the water extending into the sea up to the limit of contiguous zone of India u/s 5 of the Territorial Waters, Continental Shelf, exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976);".

Section 7 of the Act deals with notified Ports. Section 12, which has been characterised as the charging section and Section 15 which has special significance having regard to the submission of the Bill of Entry in these cases, may also be usefully extracted :

"12. Dutiable goods.-Except at otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs and 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.

* * * * 15. Date for determination of rate of 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 30 deals with the delivery of import manifest or import report. Thereunder an obligation is cast on a person-in-charge of a conveyance carrying imported goods to deliver to the proper officer within twenty-four hours of the arrival of the vessel an import manifest. The master of a vessel shall not permit the unloading of imported goods until an order is given by a proper officer granting entry inwards to such vessel.

14. It is perhaps desirable also to bear in mind the scheme of a customs legislation in general for it may facilitate a better appreciation of the contentions urged. I am tempted to extract the words of Barwick, C.J. of the High Court of Australia in that well-known case. *The Queen v. Bull and Ors.* (1974) 48 BLJR 232 at p. 236, while dealing with the Customs Act. He explained the scheme in the following words :

"The scheme of the Act thus seems to be to control the due importation of goods by channelling shipping through proclaimed ports having defined limits and through bearing stations within the port to appropriate wharfage. The inward cargo is to be reported, the goods are to be entered unshipped immediately upon importation, and upon the passing of the entry, to be forthwith dealt with in accordance with the terms of the entry. In order to secure due importation, all goods from importation until passed into home consumption or until exportation abroad are Subject to customs control. Goods in transit not intended to be landed are also subject to that control."

15. As we are concerned with the question of levy of import duty, it is equally useful to refer to the nature and attributes of that tax as elucidated by the decision of the Supreme Court in *In re : Sea Customs Act (1878) Section 20(2)* AIR 1963 SC 1760. Paragraph 26 contains these observations :

"Similarly in the case of duties of customs including export duties though they are levied with reference to goods, the taxable event is either the import of goods within the customs barriers or their export outside the customs barriers....Now, what is the true nature of an import or export duty ? Truly speaking, the imposition of an import duty, by and large, results in a condition which must be fulfilled before the goods can be brought inside the customs barriers, i.e. before they form part of the mass of goods within the country."

(emphasis supplied)

16. Perhaps the essence of the concept of import was explained with commendable lucidity by Story, J. over 160 years ago in *The Schooner "Mary"*, 1 Gallision 206, when he said that "an importation is a voluntary arrival within some port with intention to unload the cargo".

(emphasis supplied)

17. That when goods are carried through the limits of harbour and then landed

elsewhere it would not lead to a situation where goods are "imported into a harbour" had been held in *Wilson v. Robertson* (1855) 24 LJOB 185 a decision which has been referred to with approval by our Supreme Court. The Judicial Committee of the Privy Council too explained the concept of "import" in the setting of Canadian Customs Statute in *Canada Sugar Refining Co. v. The Queen*, (1898) A.C. 735, when it held that " "imported into Canada" meant imported at the port of discharge and at no earlier port of call" (emphasis supplied). In the Australian decision, (1974) 48 A.L.J.R. 232, after referring to the wealth of judicial opinion on the subject, Gibbs, J. expressed the views, and expressed them forcibly in the following words :

"However whether or not the sea within three nautical miles of the coast should be regarded as part of Australia for other purposes, it is, in my opinion, clear that goods are not imported simply by bringing them within the three miles limit. It does not conform to ordinary usage to say that goods are imported into a place if they are brought there in the course of transit but with no intention that they should be unloaded there. For example, in ordinary understanding goods would not be thought to have been imported into Australia if they were carried through the waters within three miles of the Australian coast by a ship which did not put into port. Even if goods are brought into port they are not necessarily imported, for example, a cargo being carried from England to New Zealand is not imported into Australia when the ship on which it is carried puts into an Australian port on route."

Barwick, C.J. also was thinking on the same lines when he observed in the aforesaid decision :

"However, in any case, it is to my mind a completely impractical concept that importation of goods takes place so soon as and wherever the ship carrying them enters the marginal seas, perhaps only to leave them again for navigational purposes as it moves towards the port of discharge."

The learned Chief Justice had earlier observed :

"It seems to me that the conclusion that entry into the port with the intention of being landed constitutes importation is implicit throughout the reasons for decision in *Wilson v. Chambers* (supra), and is so expressed in the reasons of individual Justices, e.g., at pp. 134 and 139."

The necessity to have an ending of the carriage or the factual breaking of the continuity thereof for a complete importation had again been emphasised by Issacs J. in *Wilson v. Chambers & Co. Pvt. Ltd* (1926) 38 CLR 131.

18. As stated earlier, the contention of the petitioners is that the liability for duty arises on the entry of the goods in the territorial waters of India and that, that event beyond doubt, happened for the first time when the ship crossed the Customs frontiers of the Bombay port and berthed therein. To a question put to counsel whether one could posit an importation of goods, even when a ship had

happened to be in the territorial waters but had passed along without calling on any of the Ports in India, it was submitted that such an accidental passage of a vessel with the goods will not constitute import, even though, on a mechanical and literal look, the goods happened to be within the territorial waters of India and in that sense had been imported into India. What would be the position if ship with goods intended for an importer at Cochin, but with other merchandise too dischargeable at other Ports in India and intended for other importers in India, called on some such ports in India before it reaches the Cochin Port for discharging cargo in respect of which importation was contemplated at Cochin by the persons intending import ? Could it be said that every time the vessel entered a Port in India, there has been an importation and consequently a liability for import duty ? The absurd and disastrous consequences of the result, *prima facie*, are such as that that could not have been intended by the statute at all. Yet, the mere possibility of their being such inconvenient and absurd consequences may not deter a court from placing on a statute literal interpretation, if it is warranted on a consideration of all the relevant canons of construction. Whether such a literal reading should be made in these cases, may have to be considered at some length.

19. Imports generally take place as a result of transactions between traders, between two different countries. Such transactions in modern commercial world mostly partake the character of a sale as Chief Justice Marshall observed in *Brown v. State of Maryland*, 6 Law Ed. 678. Imports may also take place pursuant to a gift of articles too, from a person in one country to another in a different country. Those cases are, however, few and far between. At any rate, as regards the principle relevant, it does not make much of a difference whether it was a sale or a gift that occasions the import of the goods. Well entrenched into the concept of the import therefore is a transaction of sale. That posits as essential ingredients, an agreement of sale, a passing of consideration and delivery of property. All these are fixed with reference to two distinct contracting parties. A concept of import therefore, according to me, cannot be dissociated with a person exporting the goods and a person who imports them. And in our country, the status and standing of the importer are of particular significance. A reference to the Import Policy (the Red Book, as it is popularly called) could reveal the conditions to be fulfilled or the qualifications to be acquired before a person could be an importer. The words in the statutory provisions have to be, therefore, linked with not only the goods but with the person who is a contracting party to the transaction which propels the import of the goods. In other words, the ingredients of the term "import" have to be linked with the importer of the country of destination of the goods. If this view point is kept in mind, there may not be much difficulty in understanding the various statutory provisions. Thus, for example, the mere fact that the goods crossed the customs frontiers in a Port in which the importer has no intention whatever to have the goods delivered over from the ship, will not amount to import for the simple reason that the importer had no intention whatever in relation to those goods to have access to the goods,

except at the Port of destination which he has specified in the contract with the foreign seller. The "intention" element has been given great emphasis by Lush J. in *Muller v. Badurin* (1849) 9 QB 459. Thus, a ship which delivers goods intended for different importers may call on intermediate Ports in India, whether it be Bombay or at Mangalore. But, as regards the importer who contracted for the goods and the carriage thereof to Cochin, the question of importation has to be determined in the light of the statutory provisions but without forgetting the central fact that the importer has intended the goods to be imported at the Port of Cochin. In this view of the matter, I am clearly of opinion that the mere entry of the vessel with the goods into the territorial waters or even berthing in the port of Bombay will not, vis-a-vis the petitioners importers at Cochin, constitute a completed import of the goods at Bombay. That was a matter of mere transit. Importation took place only when the vessel crossed the customs barriers at the intended Port of importation, namely, Cochin.

20. My conclusion, I feel, is in accord with the principles relating to the interpretation to be placed on the term "import" as given by the Supreme Court in *The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur Vs. The Municipal Committee, Wardha*,). The inconvenience and confusion which would result in a literal construction of the words "import" and "export" by causing even the goods in transit being subjected to tax on arrival and departure at every intermediate station was dealt with at length in that decision. Inordinate delay and unbearable burden on trade which such an interpretation would place, were also referred to there.

21. The same reasoning will apply with equal force in the present case. If, as the petitioners contend, there was a completed importation of the goods for the only reason that the vessel with the goods entered and berthed at, the Port of Bombay, the subsequent sailing would constitute, on an apriori reasoning, an export of those goods. And yet in respect of such goods, it is admitted that no formalities relating to the export of goods had been complied with. The argument if pursued to its logical conclusion will result in a self-stultifying ratiocination as regards the petitioners.

22. The facts of the present cases, bear close similarity to these in the decision *Mersey Dock & Harbour Board v. Twigge* (1898) 67 LJQB 604 referred to with approval by the Supreme Court in *Empress Mills* case, *supra*.

23. The principles gatherable from the aforesaid decision of the Supreme Court have been applied in two recent decisions, one of the Madras High Court and another of the Calcutta High Court. Padmanabhan, J. of the Madras High Court in *K.R. Ahmed Shah v. Additional Collector of Customs, Madras* and Ors. 1981 ELT 153. While considering a case of a passenger arriving at Meenambakkam airport, whose ornaments including diamonds of a quantity in excess of permissible limits of import, had occasion to construe Section 111(d) of the Customs Act relating to the liability for confiscation of goods of the type referred to in that section. The learned Judge observed :

"It is now settled by high authority that unless goods that are brought into the country for the purpose of use, enjoyment, consumption, sale or distribution are incorporated in and got mixed up with the totality of the property in the country, they cannot be said to have been imported."

Reference had been made to other decisions also including that of the Delhi High Court in *Union of India and Others Vs. Khalil Kacherim*, an earlier decision of the Madras High Court in *K.R. Ahmed Shah v. Asst. Collector of Customs* 1975 LW Cri 127 an unreported judgment of Veeraswami, C.J. in W.A. No. 84 of 1968, and the Judgment of Krishnaswamy Reddy J. in C.A. No. 712 of 1973. In paragraph 11 of the judgment the principles deducible from the decisions alluded to in that judgment were summarised as follows :

"(1) Goods can be said to be imported to the country only when they are incorporated in and mixed up with the mass of goods in the country. (2) It cannot be said that the moment an aircraft lands at an international airport in this country, the goods are imported and to hold otherwise would create inconvenience and confusion and would render the goods which are in the aircraft meant to be carried to other countries subject to the Customs laws of this country. (3) Once a passenger enters the Customs area and makes a declaration of what all he had brought and does not make any attempt to take the goods across the Customs barrier in violation of the customs laws of this country, it cannot be said that he had imported or attempted to import any goods contrary to any prohibition imposed by and under the Act or any other law for the time being in force."

These principles were approved of as accurate and correct in a later judgment of the Calcutta High Court in *Shewbuxrai Onkarmall v. Asst. Collector of Customs and Ors.* 1981 ELT 298. That decision further noted another decision of the Madras High Court reported in *K. Jamal Co. v. Union of India* 1981 ELT 162 and the decision of the Supreme Court in *Prakash Cotton Mills (P) Ltd. v. B. Sen and Ors.* AIR 1979 SC 673.

24. The decision of the Supreme Court in *Prakash Cotton Mills (P) Ltd. Vs. B. Sen and Others*, , however only deals with the effect and impact of interpretation of Sections 12, 15(1)(b) and 68 of the Customs Act. The actual question related to the application of the exchange rate in relation to the imported goods-whether in a case where goods have been imported and had been warehoused complying with the requirements of Section 68 of the Act, the applicable rate was one which ruled on the day of the importation or that prevalent on the date on which the warehoused goods were actually removed from the warehouse. The Supreme Court held that the crucial date was the date on which the goods were actually removed from the warehouse. It may, however, be clarified that in the present cases, we are not concerned with the goods in respect of which warehousing u/s 68 and taken effect.

25. It now remains to that with a decision of the Bombay High Court on which

much reliance was placed by the counsel for the petitioners. The decision is the one reported in *M.S. Shawhney v. Messrs. Syhanian and Laxman Ltd.* (1975) 77 BomLR 880. That decision had treated Section 12 of the Customs Act as the charging section. The Court observed that "the charge-ability in respect of levy of customs duty arises when the goods are imported into India, i.e., when they cross the customs barriers. The contention that taxable event occurs only when the Bill of Entry is presented or transfer was rejected. Reliance was placed on an earlier decision of that court in *Gopal Mayaji v. T.C. Sheth* (1959) 60 BomLR 486. Though the general observations of the Supreme Court in AIR 1963 SC 1760 were noted, the *Empress Mills* case is not seen adverted to. The decision in (1950) 60 BomLR 486 also did not make any reference to the decision of the Supreme Court in *Empress Mills* case. The gist of the decision is that if as a result of a statutory " notification, on the date of importation, no duty was leviable, the goods which thus obtained an immunity from duty could not be subjected to a levy for the only reason that at the time the goods were removed, the statutory notification granting exemption had ceased to be operative or effective. (This decision, according to the Department, was one which gave rise to conflicting views in the same High Court). The Department sought a binding and authoritative interpretation of that judgment. That interpretation was ultimately given by the Division Bench in the decision in *Synthetics & Chemicals Ltd. v. S.C. Continhiho and Ors.* 1981 ELT 414. The later Division Bench, after a discussion of the case, indicated "the only manner in which that judgment be understood and implemented in its operation when different facts are presented before the court". It must, however, be noted that in the present case, the facts attracting the provisions of Section 15(1)(b) do not at all exist. The wide observations in the judgment in *M.S. Shawhney's* case, (1975) 77 Bom. L.R. 880 have to be understood and applied in the peculiar factual background of that case. In respect of an importer admittedly at Bombay, and intending importation at Bombay. If the ship carrying the goods entered the territorial waters and berthed at the Port of destination as intended by the importer, the importation may be complete, at any rate as regards the chargeability, when the vessel enters the territorial waters of the country. It may be open to contend that in such a case removal of the goods from the bonded warehouse is not a mandatory requirement for the attraction of the duty on the goods. That position is, however, different where in relation to the goods there was no import at all at that port. It is, therefore, unnecessary to examine the correctness of the decision in (1975) 77 BomLR 880, for the purpose of the present cases, in view of the noted and important factual changes obtaining here. The further decision in 1981 ELT 414 which explains away and considers the relevant date for applying the rate of duty in respect of imported goods which had been permitted to be warehoused u/s 68 also is distinguishable owing to the obvious factual differences.

26. Almost a similar question had arisen before the Australian High Court, which had occasion to consider the legal position, discussing at length, the basic

principles and decided case-law. In view of the cogency in the reasoning in that decision, it is perhaps desirable that some of the extracts from that judgment are given so as to show the thrust of that decision in relation to matters pertaining to the principles to be applied in this case.

"It cannot, in my opinion, be maintained that the mere act of bringing goods into port constitutes an importation; though unexplained it may be evidence of the fact. If goods, however, are brought into their port of destination for the purpose of being there discharged, the act of importation is complete. On the other hand, the act of importation is not complete if a ship enter some port of call with goods on board which is not the destined port of discharge for those goods."

(See *Wilson v. Chambers & Co. Ply. Ltd.*- (1926) 38 CLT 131. It may incidentally be pointed out that there is useful discussion in *The Queen v. Bull* (1974) 48 BLJR 232, relating to the question of punishing a person involved in illegal importation, and the significance of the proximity of a vessel to the territory of a State and the territorial waters in that context. The latter decisions contains a reference to the well-known decision in *Reg. v. Koyns* (1876 2 Ex. D. 63).

27. The survey of the decisions referred to above appears to support the conclusion reached earlier.

28. No other contentions had been urged, though some others had been shadowed in the writ petitions. These contentions have therefore not been considered in this judgment.

29. Mr. T.C. Mohandas, counsel appearing in O.P. No. 928 of 1979, besides supporting and elaborating the contentions urged in the other cases pointed out some material factual differences in his case. The vessel, in that petition carried goods from Italy to Cochin. It is claimed that the vessel entered the territorial waters long prior to 31-12-1978. The counter-affidavit is not clear or specific on this question. It has proceeded on an erroneous assumption that the case is similar to other case. The fact that in the other cases, the vessel crossed the customs barriers of Cochin only after 1-1-1978, a fact which has a material bearing on the leviability of import duty, appears to have been missed by the respondent. Without a decision on the factual point, it may not be proper to have a final decision in that case, including the legal position. The Bombay decisions *prima facie* support the petitioner's contentions. I direct the Department to examine the case afresh giving him an effective opportunity to put forward his contentions, factual and legal. Till such adjudication is concluded, necessary steps shall be taken against the petitioners in that case.

The result is that the contentions in all cases except O.P. No. 928 of 1979 of the petitioners fail. These writ petitions are, therefore, dismissed. The writ petition O.P. No. 928 of 1979 is disposed of, subject to the directions and observations contained hereinabove. The parties shall bear their respective costs.