(2008) 08 BOM CK 0064

In the Bombay High Court

Case No : Customs Appeal No. 12 of 2007

The Commissioner of Customs (Preventive) APPELLANT

Vs

Noble Asset Co. Ltd. and Others RESPONDENT

Date of Decision : 04-08-2008

Acts Referred:

Bombay Reorganisation Act, 1960 — Section 3(1)
Constitution of India, 1950 — Article 1, 1(2), 1(3), 297
Criminal Procedure Code, 1973 (CrPC) — Section 2
Customs Act, 1962 — Section 108, 110, 122, 124, 2(27)
States Reorganisation Act, 1956 — Section 8(1)
Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 — Section 5

Citation : (2008) 5 BomCR 25 : (2008) 131 ECC 102 : (2008) 157 ECR 102 : (2008) 230 ELT 22

Hon'ble Judges : R.S. Mohite, J;F.I. Rebello, J

Bench : Division Bench

Advocate : C. Chandrashekharan, Additional Solicitor General, L.S. Shetty, C. Pusharna, S.D. Bhosale and H.P. Chaturvedi, for the Appellant; E.P. Bharucha and Bomi Patel, instructed by Mulla and Mulla for Respondent No. 1, V. Sridharan and Prakash Shah, instructed by P.D. Shah, for Respondent Nos. 2 to 5, Vikram Nankani and Naresh S. Thacker for Respondent Nos. 6 and 7, Vikram Nankani, Vipin Jain, P.K. Shetty and Uday Shetty for Respondent Nos. 8 to 11 and S. Priya, for Respondent Nos. 12 to 17, for the Respondent

Final Decision : Dismissed

Judgement

F.I. Rebello, J.—Revenue has preferred this appeal against the common order dated 5th April, 2005 passed by CESTAT in the Appeals and Applications which were filed before it. The Appeals were preferred against the common order in original dated 23rd March, 2005 of the Commissioner of Central Customs (Preventive) in the matter arising out of the show cause notice dated 7th August, 2003. The Appeals preferred were allowed, both as to objection as to jurisdiction as also on other points which are set out in para.7 of the impugned order. It is Revenue which has preferred this Appeal.

2. One of the question of law which was urged before the learned CESTAT and which was framed, read as under:

Whether the Commissioner of Customs (Preventive) was the proper officer having jurisdiction to seize the rig in the EEZ and whether he was competent to issue a show cause notice and adjudicate the same to demand duties on goods imported, assessed and cleared on assessment orders of the proper officer of Customs working in the Bombay Customs House.

3. The learned Tribunal after considering the various contentions held that the Commissioner (Preventive) had rejected the objections as to lack of jurisdiction on the ground of certain decisions of the Tribunal which held that the jurisdiction of the Commissioner of Customs (Imports), Mumbai and that of the Commissioner of Customs (Preventive), Mumbai was concurrent and, therefore, whatever the Commissioner of Customs (Imports), Mumbai could do could also be done by Commissioner of Customs (Preventive). The learned Tribunal held that they do not accept this reasoning as the concurrent jurisdiction of Customs (Preventive) and Commissioner of Customs (Imports) would be confined to areas of the Port of Mumbai and districts of Maharashtra as notified, over which both the Commissioner of Customs (Imports) as well as the Commissioner of Customs (Preventive) had jurisdiction. However, in respect of the designated locations in the Exclusive Economic Zone (EEZ), no such concurrent jurisdiction exists or has been conferred as seen from the notification issued under the Customs Act, 1962. The preliminary objection as to want of jurisdiction, therefore, was upheld. The other contentions were considered and disposed off. It is Revenue who has approached this Court against the order of CESTAT.

4. Before this Court the question raised for consideration on the issue of jurisdiction has been framed as under:

r the Commissioner of Customs (Preventive) was the proper officer having jurisdiction to seize the rig in the Exclusive Economic Zone and whether he was competent to issue a show cause notice and adjudicate the same to demand duties on goods imported, assessed and cleared on assessment orders of the proper officer of Customs working in the Bombay Custom House.

5. In support of this submission it is contended on behalf of the Revenue that the Tribunal itself found that the territory of the three Districts (Mumbai, Thane and Raigad) may extend upto 12 nautical miles from the sea coast, that is, only upto Territorial Waters of India. The assessee has not challenged this finding before this Court. If the territory of the district of Thane extends upto 12 nautical miles from the sea coast, there is no valid reason as to why the said territory should not extend beyond territorial waters, that is to say, into the Contiguous Zone and the Continental Shelf, subject to the limitations imposed as per the Maritime Zones Act, 1976 and the notifications issued by the Ministry of External Affairs and the Ministry of Finance. It is submitted placing reliance on the Maharashtra State Gazetteer that the distance to be covered under Territorial Waters, the

Contiguous Zone and the Continental Shelf (EEZ) are measured from the base line of the coast of the district of Thane. The entire area where the operations are being carried out by the assessee would fall within Thane District. It is submitted that the Commissioner of Customs (Preventive) has also jurisdiction over the District of Mumbai and that the Government of Maharashtra in exercise of the powers conferred by Clause (s) of Section 2 of the Code of Criminal Procedure, 1973 has issued a notification dated 23rd May, 1988 by which Yellow gate Police Station, Brihan Mumbai has been authorized to take all actions in relation to the Designated Area in the EEZ, that is to include all offshore installations of O.N.G.C. within the area of 300 kms. from the limits of Brihan Mumbai. It is submitted that the entire policing of this area is done by the Commissioner (Preventive) who is incharge of the anti-smuggling operations in Mumbai along with Coast Guards and the State Police. Learned Counsel has placed reliance on the Administrative set up of the Mumbai Customs taken from the official web-site which sets out three Customs Zones in the Mumbai Customs, and the Commissioner (Preventive) finds place in the third zone headed by the Chief Commissioner of Customs, Mumbai-III. The functions indicated therein indicate as under:

Commissioner of Customs (Preventive), Mumbai Customs House: Anti-smuggling work in the Mumbai, Thane & Raigad districts. The Rummaging & Intelligence Wing of the Commissionerate in Mumbai covers the Docks, Mumbai Harbour, Sahar Airport and Mumbai City. The Marine and Preventive Wing of the Commissionerate covers the 220 Kms. long coastlines in the coastal districts of Thane and Raigad and also carries out joint operations with Navy, Coast Guard and Police.

It is submitted that a doubt has been raised about the implication of specific mention of the Designated Area as being within the jurisdiction of the Commissioner of Customs (Imports) and non-specification of the same while referring to the Commissioner of Customs (Preventive). It is submitted that this is obviously because assessment of imported goods cannot be done at Designated Area and have necessarily to be made in the Ports concerned, in the present case, Mumbai Port. As a matter of fact, in the present case, Rig was imported into Indian Waters and was taken to the Bombay Port and a Bill of Entry was filed for assessment before the Commissioner of Customs (Imports) and assessed. It is then pointed out that when the permission was sought by the assessees to take the goods out of the country (for repairs or sale), permission was sought to do so, by an application made before the Commissioner (Preventive) and a Shipping Bill was also filed before the Commissioner (Preventive) on 11th May, 2001 (one day prior to the seizure of the rig). This will indicate that the awareness of the department as well as the assessee as to the functions entrusted with the Commissioner (Imports) and Commissioner (Preventive) and also that the rig was not in international waters when it was seized on 12th May, 2001. It is, therefore, submitted that this practice which is of substantially long duration ought not to be disturbed by this Court, particularly when no specific prejudice is caused to the assessee by the Commissioner (Preventive) exercising the powers of search, seizure and adjudication. Referring to Section 122 of the Customs Act, it is submitted that every case under Chapter 14 dealing with confiscation of goods, etc., in which anything is liable to confiscation or any person is liable to penalty, such confiscation or penalty can be adjudicated without limit by the Commissioner of Customs. It is not the assesee''s case that Commissioner of Customs (Preventive) is not a Commissioner of Customs. Reference is also then made to Section 124 of the Customs Act in the matter of show cause to point out that there is no time limit.

6. On the other hand on behalf of the respondents their learned Counsel submits that the issue is of jurisdiction and whether the Commissioner of Customs (Preventive) was the proper officer having jurisdiction to seize the rig in the exclusive economic zone and whether he was competent to issue notice and adjudicate the same, to demand duties on goods imported, assessed and cleared on assessment orders of the proper officer of Customs in the Bombay Customs House. Reliance is placed on various provisions of the Customs Act, to contend that considering the provisions of the Customs Act, the various notifications issued thereunder as also the provisions of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act (hereinafter referred to as the Territorial Waters Act) that there is no infirmity in the finding of the learned Tribunal and consequently on this point alone the Appeal is liable to be rejected.

7. At the outset we may point out that we have heard Counsel only on the point of issue of jurisdiction considering the finding recorded by the CESTAT and we propose to deal with that issue as that goes to the root of maintainability of the Appeal itself.

8. The Rig was detained on 12th May, 2001 and a show cause notice dated 7th August, 2003 was served upon the 1st respondent. As per the show cause notice at the time of issuance of the seizure memo, the said rig was located at SI Platform at 19o 38'' 28" N and 71o 17'' 31" E. A few other facts. The Respondent No.1 M/s.Noble Asset Company Limited, incorporated in the Cayman Islands carries on business of owning and operating mobile offshore drilling units. It was the owner of the rig "Noble Jimmy Puckett". On 23rd December, 1996 a Memorandum of Agreement was entered into between the Essar Oil Ltd. and the 1st Respondent for sale of the said rig from Essar Oil Ltd. to the 1st respondent. A commercial invoice of the same date was issued by Essar Oil Ltd., to the 1st respondent for sale of the said Rig. The sale and delivery took place in international waters at IF platform which at the relevant time was not a designated area. The Rig at the relevant time was under contract between Essar and ONGC. The Respondents to enable Essar to complete the contract gave the Rig on a bareboat charter to Essar Oil through an associate concern Noble International Ltd. The contract between Essar Oil and the ONGC was coming to an end on 6th December, 1997. The 1st Respondent intended to keep the Rig

operating in the Indian waters upon conclusion of Essar Oil Ltd.''s contract with ONGC. Consequently the 1st Respondents through the bareboat charter of the said Rig to Noble International Limited, entered into an Agreement dated 12th November, 1997 with Neptune Exploration & Industries Ltd., for chartering the said Rig (commencing from the end of the contract with Essar Oil) for carrying out operations under a one-year contract awarded to Neptune Exploration and Industries Ltd., by ONGC. On completion of the contract between Neptune Exploration & Industries Ltd., and ONGC, the 1st respondent filed a Shipping Bill for export of the said Rig. The Customs Authorities, however, detained the said Rig u/s 110 of the Customs Act, 1962 and issued a detention memo dated 12th May, 2001. The Rig was released on the 1st Respondent furnishing a Bank Guarantee of Rs.15.00 crores and a Bond for Rs.97.00 crores. In 2001 the 1st Respondent exported the said Rig to Sharjah. A show cause notice dated 7th August, 2003 was served upon the 1st Respondent. It was decided on various grounds including jurisdiction. The show cause notice was confirmed by order dated 23rd November, 2005 and Appeal was preferred which Appeal was allowed on 5th April, 2006. Gazette Notifications dated 18th July, 1986 and 19th September, 1996 have been relied upon by the Respondents which list out the different areas which are notified as designated areas by the Government of India under the provisions of the Territorial Waters Act, 1976.

9. It is the submission on behalf of the respondents that on perusal of both the Notifications it will be demonstrated that the location 19o 38'' 28" N and 71o 17'' 31" E is not a designated area. Hence the said Rig when seized was in international waters and as such as it was situated within a non-designated area in the Continental Shelf and EEZ of India, neither the Commissioner of Customs (Imports) had jurisdiction over the designated areas in the Continental Shelf and EEZ of India nor the Commissioner of Customs (preventive) assuming that he has jurisdiction over any part of the EEZ, had jurisdiction to seize the said Rig or to issue show cause notice and decide upon the same. On this factual aspect on behalf of Revenue, it is sought to be submitted that the Rig was seized from a designated area and it appears to be a mistake showing it in a non-designated area. We do not propose to answer the said issue as we propose to first dispose of the issue as to whether the Commissioner of Customs (Preventive) had jurisdiction in respect of a designated area in the EEZ.

10. To answer the issue we may firstly refer to some of the provisions of the Customs Act, 1962. Section 2(27) defines "India" to include the territorial waters of India. Section 2(28) defines "Indian customs waters" to mean the waters 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 and including any bay, gulf, harbour, creek or tidal river. Section 2(34) defines "proper officer" in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Commissioner of Customs. Section 4 sets out Classes of Officers of customs. Section 4 reads as under:

ointment of officers of customs.-- (1) The Board may appoint such persons as it thinks fit to be officers of customs. (2) Without prejudice to the provisions of Sub-section (1), the Board may authorise a Chief Commissioner of Customs or a Commissioner of Customs or a Joint or Assistant Commissioner of Customs or Deputy Commissioner of Customs to appoint Officers of customs below the rank of Assistant Commissioner of Customs.

Section 5 reads as under:

Powers of the officers of customs.-(1) Subject to such conditions and limitations as the Board may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer or customs who is subordinate to him.

(3) Notwithstanding anything contained in this section, a Commissioner (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in Chapter XV and Section 108.

Under Section 28 when any duty has not been levied or has been short-levied or erroneously refunded, or when any interest payable has not been paid, part paid or erroneously refunded, the proper officer may serve notice on the person chargeable with the duty or interest which has not been levied or charged or which has been so short-levied or part paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice. Similarly, under Sub-section (2) of Section 28 it is the proper officer who has to consider the representation and dispose of the same. Therefore, considering Sections 2(34), 45 and 28 of the Customs Act it is only the proper officer assigned those functions by the Board or Commissioner of Customs who alone can exercise the powers in the matter of confiscation of goods. In other words it is such officers who can exercise jurisdiction. The power has to be exercised in terms of Section 124 by the proper officer of customs by giving a notice in writing with the prior approval of the officer of Customs not below the rank of a Deputy Commissioner of Customs and complying with the other provisions.

11. We may now refer to Notification No. 27/97-Cus.(NT) dated 7th July, 1997. This is a Notification issued in exercise of the powers conferred by Sub-section (1) of Section 4 of the Customs Act, 1962 whereby the Central Government has appointed officers to be Commissioner of Customs, Deputy Commissioner of Customs and Assistant Commissioner of Customs for the area mentioned in corresponding entry under Column No.2 of Table with effect from the date of publication of the Notification by the Central Government in the Official Gazette. We shall refer to Serial Nos. 1, 2 and 5 of the said Notification.

This Notification was superseded by subsequent Notification which came into effect from 1st November, 2002. Even under this Notification it is the Commissioner of Customs (Import), (Export) and other Officers designated under Table III (3) who have been conferred with the powers for the designated areas in the Continental Shelf and Exclusive Economic Zone of India as declared by the Government of India from time to time. In so far as the Mumbai, Thane and Raigad Districts in the State of Maharashtara, it is the Commissioner of Customs (Preventive) Mumbai who is the Commissioner for the area of Mumbai, Thane and Raigad Districts in the State of Maharashtra. In this Notification apart from Commissioner notified under Column (3) of Serial No.3 for the designated areas of the Continent Shelf and Exclusive Economic Zone of India, power has also been conferred on the Commissioner of Customs (Airport & Aircargo) Chennai, Port (Import), Chennai, Port (Export), Chennai for the designated areas in the Continental Shelf and the exclusive economic Zone of India as declared by the Government of India from time to time. It is, therefore, relevant to note that the Commissioners have been notified for the designated areas in the Continental Shelf and Exclusive Economic Zone of India on the East as also the West Coast.

12. Considering the provisions of the Customs Act and the Notifications it would be clear that in so far as designated areas in the EEZ and continental shelf concerned, u/s 4 of the Customs Act the Government of India has appointed Officers for the designated Zones and once proper Officers have been appointed for the designated zone it would mean the exclusion of the power of the other officers who have not been so designated. In Commissioner of Sales Tax U.P. v. Sarjoo Prasad Ram Kumar (1976) 37 S.T.C. 533 the issue was assessment under U.P. Sales Tax Act. The assessee was carrying on business in Sector III for which sector there was a separate Assistant Sales Tax Officer. For the assessment year 1959-60, the Assistant Sales Tax Officer, Sector II, issued to the assessee a notice u/s 21 of the Act and, in due course, made an assessment. One of the contentions raised in Appeal against the order of assessment was that he had no jurisdiction. That contention was upheld by the Appellate Court, the Revisional Authority and the High Court. Before the Supreme Court it was contended that considering the provisions of the Act, all the Assistant Sales Tax Officers in Lucknow Circle had jurisdiction to assess all the dealers in Lucknow Circle. The Supreme Court held that this was unacceptable and observed as under:

is for obvious reasons the rule-making authority has empowered the Commissioner to allocate separate areas for separate Assistant Sales Tax Officers. When such an allocation is made, the jurisdiction of each officer is confined to the area allotted to him.

A similar issue had come up for consideration before the High Court of Karnataka High Court in Devilog Systems India Vs. Collector of Customs, Bangalore, . In that case the goods were imported throughMadras Port were cleared for home consumption at Inland Container Depot, Bangalore. Short levy show cause notices were issued by Assistant Collector of Customs, IAD, Madras. The issue was whether under the notification dated 1st February, 1963 IAD Madras Officers had been conferred jurisdiction as ''proper officers'' for the purpose of issuing a valid notice u/s 28(1) of the Customs Act. It was pointed out before the Court that by a Board Notification instead of Assistant Collector of Customs even the Principal Appraisers could act as proper officers. The learned Bench posed to itself a question as to whether such Officers could be the proper officers for the proper imports considering Section 28(1) of the Act. The learned Bench proceeded to hold that the Officers must have jurisdiction and, therefore, it stands to reason that the proper officer must be a officer who must be functioning within the jurisdictional Collectorate where the import in question has been effected as otherwise an anomalous situation would follow. The submission on behalf of Revenue was that any officer upto the rank of Principal Appraiser stationed anywhere in India can issue notice u/s 28(1) of the Act to any importer who may have imported articles attracting customs duty in any part of India. This contention was rejected.

Our attention was also invited to the statutory interpretation by F.A.R. Bennion , Butterworths, 1984 to the following:

some cases the Act conferring jurisdiction does so in affirmative terms, leaving it to be inferred that what is not expressly given by the Act is to be taken as withheld. An example is the legislation setting up the Lands Tribunal. In Essex County Council v. Essex Incorporated Church Union (1963) AC 808, it was held by the House of Lords that the parties could not consent to give the Tribunal a jurisdiction not within the words of the Act.

On a reading of the provisions of the Act itself read with Section 4 and 2(34) and Section 28 as also Section 124 it is only the proper officer notified for that area who could exercise the powers under the Act and to that extent the Commissioner (Preventive) Mumbai would have no jurisdiction.

13. The submission, however, on the part of Revenue is that the area in the EEZ where the vessel was seized would fall within the extended area of Thane District and that being so in terms of the Notification the Commissioner (Preventive) could exercise jurisdiction both in Mumbai and Thane. The exercise of jurisdiction and issuing of show cause notice and passing orders, theerfore, cannot be faulted. For that purpose reliance is placed on the Maharashtra State Gazetteers for Thane District to show that it extends between 18o 42'' and 20o 20'' north latitude and 72o45'' and 73o45'' east longitude and that similarly the Greater Bombay extends between 18o53'' N. and 19o20''N and between 72o45''E and 73o00''E and Kolaba lies between 72o55'' and 73o43'' north latitude and 18o50'' and 17o50'' east longitude. Reliance is also placed on a Notification on the Website as to how the Administrative Functions are carried on and that the Commissioner of Customs (Preventive), Mumbai Custom House, Anti-smuggling work in the Mumbai, Thane & Raigad Districts and that the Marine & Preventive Wing of the Commissionerate covers the 220 Kms. long coastlines in the coastal districts of Thane and Raigad and also carries out joint operations with Navy,

Coast Guard and Police. It is submitted by placing reliance on the Judgment of the Karnataka High Court in Great Eastern Shipping Company Limited v. State of Karnataka and Ors. 2004 (136) STC 520 and the judgment of the Madras High Court in M.S.S.V.M. & Co. v. State of Madras 1954 Mad 291 that the District of Thane would extend to the territorial waters i.e. 12 nautical miles from the base line and this has been accepted by the Tribunal and once that be so, the District of Thane in its longitude and latitude would also extend to its designated areas in the Contiguous Zone and the Continental Shelf of the EEZ. Reliance is also placed on the judgment of this Court in Pride Foramer Vs. Union of India (UOI) and Others, . We may at the outset mention that the judgments in Great Eastern Shipping Company Limited v. State of Karnataka and Ors. (supra) and M.S.S.V.M. & Co. v. State of Madras (supra) were only dealing with the issue of territorial waters and not the Contiguous Zone and the Continental Shelf. The Judgment of this Court in Pride Forms (supra), we are informed by the Counsel is in Appeal before the Supreme Court. The Respondents, however, distinguished the judgment on the ground that the issue of jurisdiction was not in issue in the said judgment. The issue is set out in para.24 of the judgment, "Whether the import of goods such as spares, spare parts, other equipments and fuel ("spares" for short) and transhipment 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 while it was operating on the designated area of the "Economic Zone". The petitioner there had argued that the rig operating at designated areas of EZ would be operating outside the territorial waters. The said rig would be a foreign going vessel entitled to the benefit of non-payment of duty and consequently entitled to consumption of imported goods without payment of customs duty while operating in designated areas. This contention was rejected by the High Court which held that the designated areas in the EZ were part of India and hence the rig operating in the designated area was not a foreign going vessel and the spares is to be used on the rig were liable to customs duty. It would thus be clear that considering the ratio of the judgment in Pride Foramer (supra) that the issue involved in this Appeal as to jurisdiction of the Commissioner of Customs, Preventive based on notification issued u/s 4 of the Customs was not in issue.

14. However, let us consider the said contention as it has been extensively urged on behalf of the Revenue by the learned Additional Solicitor General. Article 297 of the Constitution of India sets out that all lands, minerals and 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. The said Article then sets out, that 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. This Article was substituted by the Constitution (Fortieth Amendment) Act, 1976 and came into effect from 27th May, 1976. Article 1 of the Constitution was not amended either to include the

territorial waters or the continental shelf or the exclusive economic zone and other maritime zone as forming part of the territory of India. Under Article 1(3) the territory of India shall comprise - the territories of the States, the Union Territories specified in the First Schedule; and such other territories as may be acquired. Under Article 1(2) the States and the territories thereof shall be as specified in the First Schedule. In so far as Maharashtra is concerned it consists of the territories specified under Sub-section (1) of Section 8 of the State Reorgainsation Act, 1956, but excluding the territories referred to in Sub-section (1) of Section 3 of the Bombay Reorganisation Act, 1960. There is no dispute that Districts of Greater Mumbai, Thane and Kolaba which includes Raigad are part of the State of Maharashtra. The question is whether the area of the district extends to the territorial waters, the continental shelf and the exclusive economic zone. The Convention on the Law of Sea known as United Nations Convention on the Law of Sea, 1982 was adopted at its 11th Session on 30th April, 1982. In terms of this Convention it was accepted that the sovereignty of a coastal States extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil. The sovereignty over the territorial sea is exercised subject to this convention and to other rules of International law. Breadth of the territorial sea extends to 12 nautical miles, measured from base lines determined in accordance with this Convention. There is then what is known as Contiguous Zone where instead of exercising sovereignty 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. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured. We have then what is known as Exclusive Economic Zone which extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. In so far as Exclusive Economic Zone it is specifically made clear that this is subject to the rights and jurisdiction of the coastal States and the rights and freedoms of other States are governed by the relevant provisions of this Convention. In so far as the rights, jurisdiction and duties of the coastal State in the E.E.Z. it 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 sea-bed 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. It is not necessary to refer to other aspects of the matter.

15. Parliament subsequent to substitution of Article 297 enacted the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 which we have earlier described as the Territorial Waters Act. It

consists of exercising sovereignty in territorial waters which extends to twelve nautical miles from the nearest point of the appropriate baseline but allows innocent passage through the territorial waters to all foreign ships(other than warships including submarines and other underwater vehicles) for which separate provisions have been made. The limit of the Contiguous Zone is the line every point of which is at a distance of twenty-four nautical miles from the nearest point of the baseline and the Central Government is allowed to exercise power and take measures for the security of India and immigration, sanitation, customs and other fiscal matters. Section 6 deals with the right in the Continental Shelf. Under this Section, continental shelf comprises the seabed and subsoil of the submarine areas that extend beyond the limit of its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margins or to a distance of two hundred nautical miles. Over this area of the continental shelf India has and exercised sovereign rights for the purposes of exploration, exploitation, conservation and management of all resources. u/s 7(6) the Central Government can declare any area of the exclusive economic zone to be a designated area. By virtue of Section 7(9) in the exclusive economic zone and the air space over the zone, ships and aircraft of all States shall, subject to the exercise by India of its rights within the zone, enjoy freedom of navigation and over flight. It may be mentioned that all Countries have not subscribed to the International Convention of the Laws of the Sea nor to the exclusive rights in the EEZ. Considering Article 297 and Article 1 of the Constitution, it will be clear that the territorial waters, Contiguous Zone, Continental Shelf and EEZ are not part of the territory of India but India exercises sovereign rights in respect of the territorial waters, on the continental shelf and also certain sovereign rights within the EEZ. In A.M.S.S.V.M. & Co. (supra) the Madras High Court referred to various commentaries on International Laws of the Sea. From the Commentaries referred to, it is clear and as observed in Oppenheim''s International Law, where the learned Author had added "that the territorial waters are as much inseparable appurtenances of the land as are the territorial subsoil and atmosphere." Messrs Higgins and Colombos on International Law of the Sea have in respect of the right of a State over its maritime belt and observed as under:

h some it is an actual ownership (''dominium'') because it implies in certain cases an exclusive enjoyment very characteristic of ownership, especially in the matter of fishing and pilotage; others treat it as a right of limited sovereignty conferring only a right of jurisdiction on the littoral State.

They have thereafter observed that "the right which the State possesses is one "of jurisdiction or qualified sovereignty". It is not necessary for us to refer to the other extracts therein. Suffice it to say that the rights over the territorial waters, the continental shelf and the contiguous zone from the EEZ are to be exercised by the Sovereign nation i.e. India and not by States consisting the Union of India. At the highest and we do not propose to answer the issue, considering distribution of powers it will be open to the Competent Legislature of a State in so far as territorial waters are concerned to exercise legislative powers in respect of those subjects over which it has to exercise legislative competency. The observations of this Court in Pride Foramer, must, therefore, be considered in the context of the Customs Act and the Territorial Waters Act. Similarly, the judgments of the Madras and Karnataka High Courts must be understood in that context.

16. We may also refer to the judgment in Bernard Pianka and Anr. v. The Queen (1979) A.C. 107 where the issue was power of the Magistrate to exercise jurisdiction in respect of drug offence in the territorial waters of Jamaica. Reference was made to the judgment in Reg v. Keyn. There it was observed that there was a difference of opinion as to whether the territorial belt is part of the territory of England. However, there was general concurrence that in any event the Parliament of the United Kingdom had legislative power as regards the territorial belt and, therefore, in respect of an offence committed in the territorial waters in the absence of any legislation the Court would have no jurisdiction.

Understood in the proper context the area of the District of Greater Mumbai and Kolaba(Raigad) would be their land mass. The areas of districts of coastal States, definitely cannot extend into the designated areas of EEZ.

The contention, therefore, urged on behalf of the Revenue that the Collector (Preventive) having been notified as the proper officer for the District of Raigad would have jurisdiction over the notified areas in the EEZ must be rejected. Once the power has been exercised u/s 4, then it is only the proper officer who can only exercise the powers in respect of the areas in respect of which the jurisdiction has been conferred on them. Neither practice would confer jurisdiction nor consent would confer jurisdiction. The finding by the CESTAT in our opinion, therefore, cannot be faulted. The Appeal preferred is, therefore, dismissed.

