
(1973) 02 BOM CK 0008

In the Bombay High Court

Case No : O.C.J. Miscellaneous Petition No. 172 of 1969

The Great Eastern Shipping Co. Ltd.

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 19-02-1973

Acts Referred:

Customs Act, 1962 — Section 2, 86, 87

Citation : (1974) 76 BOMLR 115

Hon'ble Judges : Nain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Nain, J.—This is a petition for a writ of certiorari or other appropriate writ, order or direction quashing three orders exhs. F, H and I to the petition. The order exh. F is passed by the Assistant Collector of Customs, Bombay, on April 7, 1966. Exhibit H is an appellate order passed by the Collector of Customs, Bombay, on October 25, 1966 and exh. I is an order dated November 1, 1968 passed by the Government of India in revision. In the said orders the authorities have held that if a foreign-going Indian cargo vessel loads coastal cargo at intermediate Indian ports for delivery at other Indian ports it is liable to pay customs duty on imported fuel and other consumable goods on board and is not exempt from such duty u/s 87 of the Customs Act, 1962.

2. The petitioners own 16 ships of which 13 are exclusively foreign-going vessels and the remaining 3 are coastal vessels. One of the ships owned by them is m.v. "Jag Shanti". It is registered as a foreign-going vessel. Its thirteenth voyage started at Calcutta on July 3, 1964 for Yawata in Japan, In Calcutta it took about 10,000 tons of iron ore intended for Yawata in Japan. At Kakinada in India it took about 3,000 tons more of iron ore intended for Yawata. The ship reached Yawata on August 16, 1964 and unloaded its entire cargo booked for that port. Thereafter it commenced its fourteenth voyage and it proceeded via Pacific Ocean to the West Coast of the U.S.A., on the way picking up cargo for delivery

at ports on the U.S.A. west coast, Japan, India, Pakistan and what is now Bangladesh. On its way back from the west coast of U.S.A. it discharged some cargo on Japanese ports and proceeded to Calcutta via Tuticorin, Bombay and Madras. When the ship reached Bombay, it had a small quantity of about 3,000 tons of foreign cargo intended for Calcutta. In Bombay it took about 8,442 tons of cargo for Madras and Calcutta. The goods intended for Madras were discharged at Madras and a further consignment of 340 tons was taken at Madras for Calcutta. The remaining cargo both foreign and Indian was discharged at Calcutta. After Calcutta the ship proceeded on its fifteenth voyage again to Japan, but with this we are not concerned.

3. It will be seen from what has been stated hereinabove that a large part of the goods carried by m.v. "Jag Shanti" was carried from Indian ports to Yawata in Japan and from Pacific Coast of U.S.A. to ports in Japan, India, Pakistan, and now Bangladesh. It is true that when proceeding from Bombay to Calcutta via Madras, it had only about 3,000 tons of foreign cargo left to be delivered at Calcutta. It, therefore, took about 8,800 tons of cargo at Bombay and Madras for delivery at Madras and Calcutta in order not to waste its carrying capacity.

4. After getting the particulars of the goods carried by m.v. "Jag Shanti" on its thirteenth and fourteenth voyages from Calcutta to American west coast via Japan and back to Calcutta, the Customs Authorities called upon the petitioners to file a Bill of Entry for ship stores consumed during what they called "coastal trade" and to pay duty thereon. The petitioners refused to comply. On April 7, 1966 the Assistant Collector of Customs, Bombay, passed his order exh. F to the petition. In the said order it is stated that while the ship carried some bottom cargo from abroad, it lifted a larger quantity of goods from Bombay and Madras for delivery at Madras and Calcutta and the local cargo being comparatively more than the foreign cargo carried by the vessel between Bombay and Calcutta, the ship is treated as having entered into "coastal trade" for the purpose of levying of duty on ship stores and that the exemption u/s 87 of the Customs Act, 1962 will not be applicable. This is the first impugned order. The petitioners appealed to the Collector of Customs who passed his order dated October 25, 1966 exh. H to the petition. The Collector of Customs took the view that once a foreign-going vessel takes cargo from one Indian port for delivery at another Indian port even if it has got foreign cargo on board it loses the privilege of being a foreign-going vessel and must pay duty on the imported fuel and other stores consumed on board during that period. He rejected the appeal and confirmed the order of the Assistant Customs Collector. This is the second impugned order. The petitioners filed a revision application with the Government of India which was rejected by order dated November 1, 1968 exh. I to the petition. Thereafter on February 6, 1969 the petitioners have filed the present petition challenging the validity of the three orders exhs. F, H and I to the petition.

5. The respondents have filed the affidavit dated May 22, 1969 of one N.H. Sain, Assistant Collector of Customs, Bombay, in reply to the petition. The respondents

have taken the following contentions:--

(1) That the vessel m.v. "Jag Shanti" loaded local cargo weighing 6,738 metric tonnes for Madras at Bombay and 1,540 metric tonnes for Calcutta. As compared with that there was foreign cargo of 3,057.61 metric tonnes from Bombay to Calcutta. Thus the vessel had preponderance of coastal cargo as compared to the foreign cargo.

(2) The vessel m.v. "Jag Shanti" had both coastal cargo as well as foreign cargo at the time when she left the port of Bombay and the said vessel could not therefore be treated as a foreign-going vessel within the meaning of Section 2(21) of the Customs Act, 1962.

(3) A foreign-going vessel is a vessel for the time being engaged in the carriage of goods or passengers between any port in India and any port outside India, whether touching any intermediate port in India or not. In this case the vessel m.v. "Jag Shanti" when it was at Bombay took coastal cargo meant for Indian ports only and not for any foreign port and accordingly it could not be deemed to be a foreign-going vessel within the meaning of Section 2(27) of the Customs Act, 1962. The said vessel would have continued to be a foreign-going vessel if it had not loaded coastal cargo at Bombay intended for Madras and Calcutta.

6. It is necessary to refer to some provisions of law. Section 2(7) of the Customs Act defines "coastal goods" as meaning goods other than imported goods, transported in a vessel from one port in India to another. It is not in dispute that the goods loaded by m.v. "Jag Shanti" at Bombay for Madras and (Calcutta were not imported. Section 2(38) defines "stores" as meaning goods" for use in a vessel or aircraft and includes fuel and spare parts. Section 2(27) which is the subject-matter of interpretation reads as follows:--

2. (21) "foreign-going vessel or aircraft" means any vessel or aircraft for the time being engaged in the 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--...

(iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever;" (*italics supplied*).

7. Section 86(1) provides that 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. Section 87 provides that any imported stores; on board a vessel or aircraft may without payment of duty be consumed thereon as stores during the period such vessel or aircraft is a foreign-going vessel or aircraft.

8. The contention of the petitioners is that on the thirteenth and fourteenth voyages of m.v. "Jag Shanti" from Bombay to U.S.A. west coast ports via Japan and back via Japan to Bombay, bulk of the goods was carried by the vessel from ports in India to ports in Japan and from ports in U.S.A. to ports in Japan, India, Pakistan and Bangladesh. Even when the vessel carried about 7,00.0 tonnes of

coastal cargo from Bombay to Madras and Calcutta it had some foreign cargo loaded at foreign ports for delivery in Calcutta which the vessel was bound to deliver at Calcutta. It is only in order not to waste the unused carrying capacity of the vessel that some coastal goods were carried from Bombay to Madras and Calcutta. The petitioners state that m.v. "Jag Shanti" is registered with the Shipping Authorities as a foreign-going vessel. Its normal work is to carry goods from ports in India to ports abroad and from ports outside India to other ports outside India and from ports outside India to ports in India and that they carried the small consignment from Bombay to Madras and Calcutta while they had foreign goods on board, which they were in any case bound to deliver at Calcutta. It is, therefore, contended that the vessel did not cease to be a foreign-going vessel because it carried a quantity of cargo from an Indian port to another Indian port while engaged in carrying goods from a port outside India to ports in India.

9. It is firstly contended on behalf of the respondents that because on its journey from Bombay to Calcutta the vessel carried coastal cargo weighing 7,038 metric tonnes for Madras and 1,544 metric tonnes for Calcutta as compared with foreign cargo of 3,057 metric tonnes intended for Madras and Calcutta, it had preponderance of coastal cargo and, therefore, it ceased to be a foreign-going vessel. I am afraid, I am unable to accept this contention. If at the time of loading 6,738 tonnes at Bombay for Madras and Calcutta the vessel did not have on board goods loaded abroad which were intended for delivery in Madras and Calcutta, it could reasonably have been argued that the ship was carrying only coastal goods. In this case the vessel had on board some cargo loaded abroad which under the contract of affreightment it was bound to deliver at Madras and Calcutta. The vessel had, therefore, necessarily to sail from Bombay to Madras and Calcutta. If in the course of that necessary voyage it took some cargo which was even larger than the foreign cargo it was carrying for delivery at Indian ports it did so only not to waste the carrying capacity of the vessel which would have been a dead loss to the Company. The petitioners put the vessel to the best use. In my opinion, this does not make the ship any the less a foreign-going vessel.

10. Mr. Joshi, who appears on behalf of the respondents, contended that Section 2(27) defines a "foreign-going vessel" as a vessel for the time "being engaged in the carriage of goods or passengers between a port in India and a port abroad (*italics supplied*). He contended that when the vessel carried some goods from Bombay which were intended for delivery in Madras and Calcutta, it was for the time being engaged in carrying coastal goods. This contention does not appear to me to be correct, because the vessel was principally engaged in delivering cargo intended for Madras and Calcutta which it had taken at ports abroad. If in the course of that voyage, it took some Indian cargo, it could not be said to be engaged in carrying coastal goods, because the main purpose of the voyage was to deliver goods at Indian ports which the vessel had brought from foreign ports. I also do not accept the contention on behalf of the respondents that because the vessel had some coastal cargo on board along with foreign cargo when it sailed

from Bombay, the vessel could not be treated as a foreign-going vessel within the meaning of Section 2(21) of the Customs Act. At the time the vessel sailed from Bombay with a small quantity of foreign cargo and larger quantity of coastal cargo, it was still engaged in the carriage of goods between ports abroad and ports in India because it had such goods on board which it must deliver under the contract of affreightment.

11. Mr. Joshi lastly contended that on the voyage between Bombay and Madras the vessel consumed imported stores on board such as fuel and other consumable articles partly for the purpose of carrying coastal goods and as such the vessel should not be exempted u/s 87 of the Customs Act from paying duty on the stores so consumed. But as I have stated this consumption was during the course of a compulsory voyage from Bombay to Madras and Calcutta, which was necessitated by the existence of foreign cargo on board which must be delivered at these ports. The fuel and stores consumed on such voyage would in my opinion be exempt from duty because their consumption was in any case inevitable during the voyage for delivery of foreign cargo.

12. In the result I hold that the respondents are not entitled to call upon the petitioners to file a Bill of Entry for ship stores consumed during its voyage from Bombay to Calcutta between December 11, 1964 and January 21, 1965.

13. My attention has been drawn to a judgment dated December 12, 1972 of Banerjee J. in the Calcutta High Court in the Matter No. 414 of 1969 wherein the learned Judge has taken the same view as I have taken and has put the same interpretation on Section 2(27) of the Customs Act as I have put.

14. In the result, the rule is made absolute in terms of prayers (a) and (b). The respondents will pay the costs of the petitioners.