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COMMISSIONER OF CUSTOMS, MUMBAI

v.

M/S ABAN LOYD CHILES OFFSHORE LTD. & ORS.

(Civil Appeal Nos. 1784-1787 of 2004)

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FEBRUARY 02, 2017

[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]

Customs Act, 1962 – s.111 (a), (b), (f), (g), (h), (j) and (o), s.112, s.113 (a), s.115, 46, s.28A, 32 – Violations of – Demand for duty – Confiscation of rig brought into India for repairs – The Commissioner of customs recorded the finding that the rig in question was not declared u/s. 46 and other formalities were also not undertaken, therefore, ordered confiscation of rig under provisions of s.111 and also held that as rig was imported for home consumption, hence, assessees were liable to pay duty – Tribunal held that the rig had not entered the territorial waters for purposes of oil exploration but for repairs and it cannot be said that rig was goods imported for home consumption and covered u/s.46 and further, that in the given circumstances payment of duty on rig did not arise – However, it opined that provisions of s.111 (f),(g),(h),(j) would be attracted and rig was liable for confiscation – On appeal, held: The finding that the rig when repaired in India, it was imported for home consumption is unacceptable and faulty – Carrying out of repairs on the rig/vessel, would not amount to utilization or operation of the vessel/rig in India – Thus, it would be incorrect to hold that mere repair of vessel/rig would constitute taxable import – But, it cannot be said that owner had not violated the provisions of the Act, which are much wider in scope – The Act regulates and mandates compliance by foreign going vessels when they enter the territorial waters – Provisions of the Act are required to be met and complied with, even when vessel/rig is not a 'good' meant for home consumption – Thus, violations recorded by the Tribunal cannot be found fault with.

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Dismissing the appeals, the Court

HELD: 1. The adjudication order refers to and is predicated on the rig being brought to the port for repairs in February, 1996

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for which permission was sought from the Commissioner of Customs under the provisions of notification. The rig subsequently moved out of the port after repairs. The rig was brought for the second time to the Mumbai port for repair on 9th November, 1996 and had remained there till 2nd December, 1996. The rig thereafter was taken out and removed from the territorial waters of India as is evincible from the adjudication order. The rig was for the third time brought to the outer anchorage in Mumbai/Mumbai port on 9th December, 1998 and removed from the customs area. On this occasion, for the first time, the authorities felt that the rig had been imported into India when the rig was brought within the territorial waters for repairs. The adjudication order does not record that the rig was in operation within the territorial waters of India. On the other hand, the adjudication order does not spell out that the rig did not operate outside the territorial waters of India. The contention raised by the owner in this regard was neither specifically rejected not a different finding was recorded. The finding was that the rig when it is repaired in India, it is imported into India for home consumption. The adjudication order holds that the repairs undertaken would complete the act of import, for the requirement of home consumption was satisfied. The said finding is unacceptable and faulty. Mere repair of a vessel is not putting the vessel to use in India and would not result in home consumption as the vessel was not utilized within the territory of India. Repairs are carried on the vessel and not to utilize the vessel. It would not amount to utilization or operation of the vessel/rig in India. Thus, it cannot be said that the vessel, i.e., the rig, was imported into India when it had anchored twice in 1996 and once in 1998 for the purpose of repair, for the element of home consumption is missing even when the vessel, i.e., the rig, had entered the territorial waters. Thus, it would be incorrect to hold that mere repair of the vessel in 1996 or in 1998 would constitute taxable import. [Para 29] [334-D-H; 335-A-B]

2. The authorities have laid emphasis on the factum that the rig was purchased for being used in the oil field of ONGC and for this purpose the owner had made an application and permission/licence for import was granted by the Ministry of

A **Industry. The rig was purchased from foreign exchange released by the Government on the basis of the import licence for the rig. Release of foreign exchange, approval and licence, etc. are prior to the import. Import may not take place in spite of this aforesaid clearances/licence and release of foreign exchange. There may**
B **have been violation of another enactment/provision as the rig was not imported, albeit for deciding the question whether the rig was imported into India, the requirement of home consumption has to be satisfied. Then alone, the 'good', i.e., the vessel/rig would be taxable and customs duty payable under the Act. Pertinently, the adjudication order does not hold that the import**
C **had taken place in 1987 when the rig first put into operation in the high seas. This was not treated as the date of import or home consumption. The import as per the authorities had taken place when the rig was brought for repairs. The evaluation of the rig has been done on the basis of the last visit of the rig for repair in 1998. [Para 30] [335-C-F]**

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3. Though there was no import, but on the said finding it cannot be said that the owner had not violated the provisions of the Act, which are much broader and wider in scope. The Act regulates and mandates compliance by the foreign going vessels when they enter the territorial waters. Provisions of the Act are
E **required to be met and complied with even when no goods are to be unloaded for import into India or the vessel is not a 'good' meant for home consumption. Thus, violations recorded by the tribunal cannot be found fault with. [Para 31] [335-G-H; 336-A]**

*UOI v. V.M. Salgaonkar & Bros. Pvt. Ltd. (*1998) 4 SCC
F **263 : [1998] 2 SCR 293;** *Amership Management Pvt. Ltd. v. UOI* **1996 (86) ELT 15;** *Scindia Steamship Co. Ltd. v. CC* **1988 (36) ELT 581;** *Sedco Forex International Drilling Inc. v.* **CC 2001 (135) ELT 625** (Tri-Mumbai); *Pride Foramer v. UOI and Ors.* **AIR 2001**
G **Bom 332;** *Salgaonkar Engineering v. OJF Games* **1984 (86) Bom LR 127;** *UOI v. Mustafa and Najibhai Trading Co.* **1998 (101) ELT 529;** SC *Chowgule & Co. v. UOI* **(1987) 1 SCC 730 : [1987] 2 SCR 351;** *Aban Lyod Chiles Offshore Limited and another v. Union of India and Others* **(2008) 11 SCC 439 : [2008] 6 SCR**
H **468 – referred to.**

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Case Law Reference

1996 (86) ELT 15	**referred to**	**Para 4**
1988 (36) ELT 581	**referred to**	**Para 4**
2001 (135) ELT 625 (Tri-Mumbai)	**referred to**	**Para 4**
AIR 2001 Bom 332	**referred to**	**Para 5**
1984 (86) Bom LR 127	**referred to**	**Para 6**
1998 (101) ELT 529	**referred to**	**Para 8**
[1987] 2 SCR 351	**referred to**	**Para 8**
[1998] 2 SCR 293	**referred to**	**Para 9**
[2008] 6 SCR 468	**referred to**	**Para 27**

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CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1784-1787 of 2004.

From the Judgment and Order No. C-II/1617/03-WZB dated 30.06.2003 of the Customs, Excise and Service Tax Appellate Tribunal, WZB, Jai Center 3rd Floor, 34 P.D' Mello Road, Poona Street, Masjid Bunder, (E) Mumbai-400009, in Application No. C/MA (ORS) 945/01-MUM in Appeals C-716, 781, 814/01-Mum

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WITH

C. A. No. 4342-4345 of 2004.

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A. K. Panda, Sr. Adv., Tarachandra Sharma, Ms.Nisha Bagchi, Ms. Sujeeta Srivastava, B. Krishna Prasad, Ramesh Singh, Ms. Bina Gupta, A. T. Patra, Nipun Malhotra, Ruchika D. (For M/s. O. P. Khaitan & Co.), Vivek Jain, Mahesh Agarwal, Ms. Devika Mohan, E. C. Agrawala, Advs. for the appearing parties.

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The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. The present appeals have been preferred against the judgment and order dated 30th June, 2003 passed by the Customs, Excise and Service Tax Appellate Tribunal (for short, "the tribunal") in Application Nos. C/MA (Ors.) 945/01-Mum in C/716, 781, 782, 814/01-Mum by the revenue as well as the assessee as both are aggrieved in respect of certain conclusions arrived at by the tribunal. As the principal controversy pertains to the appeals preferred by the department, we will take the facts from the appeals preferred by it and, accordingly, we shall describe the parties.

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A 2. The first respondent, M/s Aban Loyd Chiles Offshore Ltd., engaged in business of offshore oil and gas exploratory drilling and related activities on contract basis, *inter alia*, for the Oil and Natural Gas Corporation Limited (ONGC) had obtained the approval of the Government of India on 25.03.1987 for the import of a Rig for such oil field services. It was granted a Special Import Licence bearing number B P/CG/2103211 dated 24.04.1987 for the import of the said Rig along with certain drilling equipments. A confirmed irrevocable Letter of Credit amounting to US $ 1,521,000/- for the shipment of Capital goods covered under L/C No. ICICI/RF/87/2 dated 08.05.1987 was given by ICICI Bombay against the said Import Licence. As per the special instructions C annexed to the said Letter of Credit, the transport documents were required to fulfil six conditions including the one, that is, the shipping document should indicate the place of final destination and should not be different from the port of discharge. As the factual matrix has been uncurtained, the assessee purchased in July 1987 a rig, Griffin Alexander III, from Griffin Alexander Drilling Co. for a price of US $ 5.39 million. D The rig was towed directly to the drilling site at Bombay High in October 1987. In February 1996, the importer wrote to the Commissioner of Customs, Mumbai, seeking permission to import the rig into Mumbai for carrying out repairs and re-export in terms of the provisions of Notification No. 153/94-Cus.

E 3. It is not in dispute that the rig was towed into the waters comprising Mumbai Port on 12.11.1996 and after it was repaired, taken out of the territorial waters of India. It was once again imported to India on 9th December, 1998, being towed into Indian territorial waters by two tugs of the ONGC, Malaviya IV and SCI-05. After repairs, the rig was F again towed out of the Indian territorial waters. Investigations by the Customs authorities into these two cases of importation led them to conclude that there had been contravention of certain provisions by the assessee and others with regard to these two acts of bringing the rig into India. The rig was formally placed under seizure on 27th March, 1999 but subsequently was released following the order passed in writ petitions G filed by the assessee before the Bombay High Court, permitting the rig to be used on payment of an amount of Rs. 1.0 crore and execution of a bond for its value. Thereafter, a notice was issued on 23rd September, 1999 to the assessee alleging that the import that took place in 1996 and 1998 were contrary to the provisions of law, and proposing confiscation

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of the rig under clauses (a), (b), (g), (h), (j) and (o) of Section 111 of the Customs Act, 1962 (for brevity, "the Act") and clause (a) of Section 113 of the Act, demanding duty amounting to Rs. 27.91 crores, proposing interest under Section 28A on the duty amount and penalty on the importer under Section 112 of the Act. Penalty was also sought to be levied upon ONGC under Section 112 and confiscation under Section 115 of the three vessels, and Malaviya IV owned by Great Eastern Shipping Co. Ltd. which was utilized for towing the rig in 1996 and 1998. After considering the explanation offered by the assessee, the Commissioner passed an order wherein he recorded a finding that the rig was carried and brought to Mumbai on three occasions; in February, 1996, on 9th November, 1996 and on 9th December, 1998. It was not declared in the Import General Manifest of the towing rigs, as was required under Section 46 of the Act. Such formalities as filing the bill of entry were not undertaken and, therefore, the rig was ordered for confiscation under clauses (f), (g), (j), (h) and (j) of Section 111. The Commissioner also held that the rig was imported for home consumption and hence, the assesses were liable to pay duty on the value of Rs. 44,40,28,320/-, determined after depreciating the value by 70% from the built cost of the rig. Being of this view, the said authority confirmed the demand for duty amounting to Rs. 27.91 crores, confiscation of the rig and had given the option of redeeming it by payment of fine of Rs. 2.0 crores. The authority exonerated P.A. Abraham, Managing Director of the Company, imposed penalties of Rs. 50,000/- each on P. Venkateswaran, Vice President and A.P.S. Sandhu, General Manager, ordered confiscation of three towing vessels but permitted them to be redeemed on payment of fine of Rs. 1.0 lakh each and imposed penalties on ONGC, and Benny Ltd., the importer's agent.

4. Aggrieved by the said order, assessee preferred appeal before the tribunal. On the foundation of the judgments, namely, ***mership Management Pvt. Ltd. v. UOI***[1] rendered by the High Court of Bombay, ***Scindia Steamship Co. Ltd. v. CC***[2] delivered by the High Court of Calcutta and an earlier judgment of the tribunal in ***Sedco Forex International Drilling Inc. v. CC***[3], it was contended by the assessee before the tribunal that neither any duty was payable nor any penalty was imposable. It was also urged that foreign going vessels do not cease

[1] 1996 (86) ELT 15
[2] 1988 (36) ELT 581
[3] 2001 (135) ELT 625 (Tri-Mumbai)

A to be so when they enter into Indian territorial waters only for repairs. Alternatively, it was contended that method adopted by the Commissioner by starting with the originally built cost in 1982 and determining depreciation was totally incorrect. According to the assessee, there was no contravention of any aspect contained in Section 111 and hence, no penalty could be imposed.

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5. On behalf of the department, it was propounded that the decision of the Bombay High Court was not relevant inasmuch the Court had not considered whether a rig was a foreign going vessel when it operated in the territorial waters of India. Reference was made to the subsequent decision of Bombay High Court in ***Pride Foramer v. UOI and Ors.***[4] wherein it has been held that the rigs operating in designated areas are not foreign going vessels as such areas are deemed to be Indian territory; and once it is brought into Indian territory, it ceases to be a foreign going vessel. The argument with regard to valuation was seriously opposed.

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6. The tribunal took note of the undisputed fact that when the rig was engaged in drilling and such activities outside Indian territorial waters and while not being in areas under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other maritime Zones Act, 1976 (for short, "the 1976 Act"), it was a foreign going vessel. The question that was posed by the tribunal was whether the vessel ceases to be a foreign going vessel when it enters into Indian territorial waters for purposes of repairs. It referred to the Bombay High Court decision in ***Amership Management Pvt. Ltd.*** (supra) and opined that the said decision is the authority for the proposition that a drilling rig, when engaged in drilling operations outside the territorial waters of India, is a foreign going vessel. It also referred to Calcutta High Court judgment in ***Scindia Steamship Co. Ltd.*** (supra) which had accepted the contention that even while the vessel was undergoing repairs and preparations were made to carry the cargo to foreign ports, it did not cease to be a foreign going vessel. The tribunal referred to the authority in ***Pride Foramer*** (supra) wherein the Bombay High Court taking note of the judgment in ***Amership Management Pvt. Ltd.*** (supra) had opined that the imported stores supplied to a rig located in an area designated under the Act 80 of 1976 would not fall within Section 86 of the Act. The tribunal appreciated the fact that in the said decision reliance was placed on the judgment of

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[4] AIR 2001 Bom 332

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the Division Bench of that Court in ***Salgaonkar Engineering v. OJF Games***[5] to hold that it is only that vessel which is actually carrying at a given point of time the goods or passengers between a port in India and a port outside India is a foreign going vessel. Analysing the provisions of the Act and the authorities in the field, the tribunal held that a ship that is engaged in carriage of cargo or passengers between Mumbai and Abu Dhabi is a foreign going vessel covered by the first part of the definition and would be as such a foreign going vessel throughout the length of its voyage, if, during its voyage between these two ports, it touches other Indian Ports. It further opined that a rig had been held in ***Amership Management Pvt Ltd.*** (supra) as a foreign going vessel because it was engaged in the operations outside Indian territorial waters in view of clause (2) of the extended definition, but it would not be appropriate to apply the first part of the definition while considering the second. The tribunal on that basis held that each of the three clauses of the extended definition applied to different fact situations, and each of these situations requires to be considered on its own merits. Being of this view, it ruled:-

> "It would therefore not be possible to say that a craft which is anchored without undertaking any operation whatsoever for long periods outside the territorial waters is a foreign going vessel. So also, when a rig enters Indian territorial waters for purposes of repairs, it is obviously not engaged in any operation outside India and loss its character of foreign going vessel. It may no doubt resume its character as a foreign going vessel when it leaves Indian territorial waters and resumes its operation. This is in fact that the view taken in Salgaonkar Engineering v. OJF Games. We, therefore, do not find it possible to say that the rig, on the occasion when it entered Indian territorial waters, was a foreign going vessel."

7. Dwelling upon the contention that the rig had not been imported, it opined:-

> "It was not meant for home consumption and therefore a bill of entry was not required to be filed. A related contention is also raised, that the act of importation in regard to the rig had not been completed. The judgment of the Supreme Court in Apar Pvt. Ltd. 1999 (112) ELT 3 is relied upon to say that while the act of

[5] 1984 (86) Bom LR 127

A importation commences, when the goods entered the territorial waters of India, it continues and theses completed only when the goods merge with the mass of the goods in the country."

8. After stating so, the tribunal dealt with the contention of the department that when the rig came into India, it lost its character as rig B and became goods and its importation is complete. The revenue had placed reliance on ***UOI v. Mustafa and Najibhai Trading Co.***[6] The tribunal found that the said decision had been distinguished by the tribunal since the import as understood by this Court in the facts of the case had not taken place. The tribunal referred to the decision in ***Chowgule & Co. v. UOI***[7] wherein the Court was considering whether two C transshippers, which entered India, were goods intended for home consumption and a bill of entry was required to be filed with regard to it. It was held that there was no justification for holding the vessels were not goods for the purposes of Section 46(1) of the Act and, therefore, addressed the question as to whether the vessels which were to be used D in Indian territorial waters for topping of bulk carriers could be said to be vessels for home consumption merely on that account. It said that for the purposes of levy of customs duty, it is necessary to determine whether imported goods are "goods for home consumption". The Court in that case after analysing the statutory provisions held thus:-

E "15. In our view, for the purpose of the levy of customs duty, in order to determine whether any imported goods are "goods for home consumption", we have to find out the primary intended use of the goods when the goods are brought into Indian Territorial Waters. If the goods are intended to be primarily used in India, they are goods for home consumption notwithstanding that they F may also be used for the same or other purposes outside India. We guard ourselves against saying that the converse may be true. The question whether goods not intended to be primarily used in India but used occasionally for short periods in India also fall within the meaning of the expression "goods for home consumption" G has not been examined by us. We have only considered the question whether goods brought into India for use primarily in India are goods for home consumption notwithstanding that they are occasionally or incidentally used outside India. We are of the view that they are."

[6] 1998 (101) ELT 529 SC

H [7] (1987) 1 SCC 730

9. After referring to the dictum laid down in the said authority, the tribunal further referred to the authority in ***UOI v. V. M. Salgaonkar & Bros. Pvt. Ltd.***[8] wherein it has been opined by this Court that expression "home consumption" as used in Section 46, does not warrant the construction that the commodity should have been completely used up and even putting the commodity to any kind of utility would amount to home consumption. Analysing the ratio of the judgments, the tribunal eventually concluded that according to these judgments, if the goods are imported with the intention of putting them to any kind of use in India, they are goods for home consumption and even if the vessel is used occasionally for short periods in India it would be goods for home consumption; that the rig under consideration was not intended to be used in India as it was only brought into India for the purposes of repair; and that it cannot be said that a rig brought into India for repairs and taken out after the repairs was intended to be used in India because it could not be properly put to use as repairs became necessary.

10. The tribunal further observed that in ***Sedco Forex*** (supra), it was only concerned with a drilling rig which had been imported into India in pursuance of a contract signed with the ONGC for oil exploration and exploitation wherein it noted that rigs are capable of use for offshore oil exploration or exploitation in the Indian waters and, therefore, concluded that it could not be said that the rig was not intended for use in India, and thus, it would not follow that it had not merged with the mass of the goods in the country. It further opined that that the rig under consideration in ***Sedco Forex*** (supra) was brought into India in the course of fulfilment of a contract with the ONGC and later on with Enron Power and Gas Co. and in the present case, the rig under consideration had not entered the territorial waters for purposes of oil exploration or exploitation but only had entered the territorial waters for purposes of repair. The tribunal also observed that the rig was not in the process of transit through Indian waters for the purpose of going from one point to another for drilling and this being the case, it cannot be said that the rig was goods imported for home consumption and covered under Section 46(1) of the Act. It further held that the principles laid down by this Court that while the act of import commences when the goods enter the territorial waters, it continues and is completed only when it merged with the mass of the goods in the country, will apply to the facts before it and hence, it is deducible that

[8] (1998) 4 SCC 263

A import had not been completed. On the aforesaid basis, it concluded that in the circumstances payment of duty on the rig did not arise and even if the rig was liable to duty.

11. After so holding the tribunal addressed to the contravention of the provisions of clauses (f), (g) and (j) of Section 111 of the Act. B Analysing various aspects, it opined that the provisions of Section 111 would be attracted and, therefore, contravention of clause (f) had been established. It was also held that clause (g) would also be attracted as the goods were unloaded without the permission of the competent authority as required under Section 32 of the Act. It was also held that clauses (h) and (j) would be applicable. Being of this view, the tribunal opined C that the rig was liable for confiscation. However, it opined that as there was no deliberate intention on the part of the importer to contravene the said regulations although there had been clear negligence and rules had not been followed. Having regard to the facts, it reduced the fine for redemption of the rig. That has compelled the revenue to prefer Civil D Appeal Nos. 1784-1787 of 2004 and M/s Aban Loyd Chiles Offshore Ltd. to file Civil Appeal Nos. 4342-4345 of 2004.

12. We have heard Mr. A.K. Panda, learned senior counsel along with Mr. B. Krishna Prasad, learned counsel for the appellant-department and Mr. Ramesh Singh, learned counsel appearing for respondent No. 1 E assessee in all the appeals.

13. To appreciate the controversy, it is necessary to understand certain concepts as envisaged under the Act. 'Goods' for the purpose of the Act includes vessels, aircrafts and vehicles as defined in sub-section (22) to Section 2, yet the distinction has to be recognized between F a vessel or an aircraft as a mere good and when the vessel or an aircraft comes to India as a conveyance carrying imported goods. When a vessel or an aircraft is imported into India as a good, customs duty is payable thereon. However, when a vessel is used as a conveyance of an imported good, the position would be different. In this context, reference to Section 43 of the Act would be profitable. It reads as under:-

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> "43. Exemption of certain classes of conveyances from certain provisions of this Chapter.— (1) The provisions of sections 30, 41 and 42 shall not apply to a vehicle which carries no goods other than the luggage of its occupants.

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(2) The Central Government may, by notification in the Official Gazette, exempt the following classes of conveyances from all or any of the provisions of this Chapter—

(a) conveyances belonging to the Government or any foreign Government;

(b) vessels and aircrafts which temporarily enter India by reason of any emergency."

14. As per the said provision, Sections 30, 41 and 42 shall not apply to a vehicle, which carries no goods other than the luggage of the occupants. The term 'vehicle' as defined in sub-section (42) to Section 2 means conveyance of any type used on land. As a logical corollary, it would not include a ship or vessel. Sub-section (2) to Section 43 states that the Central Government may by notification in the Official Gazette exempt the different classes of conveyances from all or any other provisions of the Act. However, we do find some difficulty as taxation or taxability of the 'foreign going vessels' when they enter Indian territorial waters is not directly addressed in the fasciculus of the Sections from 29 to 43 of the Act. These provisions do make a distinction between goods imported to be unloaded at the port for India and those which are not to be unloaded and in transit. The said aspect shall be elucidated at a subsequent stage.

15. At this stage, we would like to first adumbrate on the definition of the term "foreign going vessel or aircraft" as defined in sub-section (21) of Section 2 which reads as under:-

"(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 -

(i) any naval vessel of a foreign Government taking part in any naval exercises;

(ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;

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

A 16. The aforesaid expansive definition by way of deeming fiction includes any vessel engaged in fishing or any other operations outside the territorial waters of India. By legal fiction, a vessel engaged in fishing outside the territorial waters of India or any other operations outside the territorial waters of India is to be treated for the purpose of the said Act as a foreign going vessel. When the said conditions are satisfied, whether B the said vessel for the time being is engaged in carriage of goods or passengers between a port in India and a port outside India, is not of any relevance. Consequently, a rig which is engaged in operations outside the territorial waters of India would be a foreign going vessel. However, a rig carrying on operations within the territorial waters of India would C not be a foreign going vessel. Be it clarified, it is not necessary to dilate and examine the issue whether rigs are vessels, for it is an accepted and admitted position settled beyond doubt.

17. Coming to the core issue, we have to refer to the word 'import' as defined in sub-section (23) to Section 2 and the expression "dutiable D goods" as defined in sub-section (14) to Section 2, sub-section (27) to Section 2 which defines "India" and then refer to Section 12 of the Act. The said provisions read as under:-

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

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(23) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

x x x x

(14) "dutiable goods" means any goods which are chargeable to F duty and on which duty has not been paid;

x x x x

(27) "India" includes the territorial waters of India;

x x x x

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12. Dutiable goods. – (1) Except as 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 Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

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(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."

18. The expression "import" is a wide expression, which would include cognate expressions and means bringing into India from a place outside India. The word "India" for the purpose of the Act includes the land mass as well as territorial waters. The term "dutiable goods" are goods which are chargeable to duty and on which duty has not been paid. Once duty has been paid, the goods cease to be dutiable goods. Section 12 of the Act begins with the words "Except as otherwise provided in this Act or any other law for the time being in force". Thus, it gives primacy to any other law being in force, and records that the said provision would apply when otherwise not provided in the said Act. Therefore, when any other provision of the Act or other law for the time being provides differently, that would not attract customs duty under Section 12. Duty of custom, subject to the above, is levied at the rates specified under the Customs Tariff Act, 1975 or any other law for the time being in force on the goods imported into or exported from India.

19. In ***Chowgule and Co. Pvt. Ltd.*** (supra) on the question of chargeability of customs duty on a vessel which was being used to ship iron ore from Mormugao Harbour to ocean going carriers, it was held as under:-

"6. We may now refer to the relevant provisions of the Customs Act. Section 2(22) of the Customs Act defines that unless the context otherwise requires, "goods" includes — "(a) vessels, aircrafts and vehicles; (b) stores; (c) baggage; (d) currency and negotiable instruments; and (e) any other kind of moveable property". "Import" is defined as meaning "bringing into India from a place outside India". "India" is defined as including "the territorial waters of India". "Imported goods" are defined to mean "any goods brought into India from a place outside India but not including goods which have been cleared for home consumption". "Importer" is defined, "in relation to any goods at any time between their importation and the time when they are cleared for home consumption" as "including the owner or any person holding himself out to be the importer". "Conveyance" is defined to include "a vessel, an aircraft and a vehicle". "Bill of entry" is defined to

A mean a "bill of entry referred to in Section 46". A "bill of export" is defined to mean a "bill of export referred to in Section 50". An "import manifest or import report" is defined to mean "the manifest or report required to be delivered under Section 30". "Stores" are defined to mean "goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment whether or not for immediate fitting".
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And again:-

"8. Chapter VI of the Customs Act is concerned with "provisions relating to conveyances carrying imported or export goods", Chapter VII deals with "clearance of imported goods and export goods". Chapter VIII deals with "goods in transit" and Chapter IX deals with "warehousing". Sections 29 to 43 occur in Chapter VI and Sections 44 to 51 occur in Chapter VII. Sections 45 to 49 are dealt with under the heading "clearance of imported goods" while Sections 50 and 51 occur under the heading of "clearance of export goods". Section 29 requires the person in charge of a vessel or an aircraft entering India from any place outside India not to cause or permit the vessel or aircraft to call or land (a) for the first time after arrival in India; or (b) at any time while carrying passengers or cargo brought in that vessel or aircraft, at any place other than a customs port or a customs airport, as the case may be. Section 30 imposes a duty on a person in charge of the conveyance carrying imported goods to deliver to the proper officer, within twenty-four hours after arrival, an import manifest in the case of a vessel or aircraft or an import report, in the case of a vehicle, in the prescribed form. Section 31 prohibits the master of a vessel from permitting the unloading of any imported goods until an order has been given by the proper officer granting "entry inwards" to such vessel. An "entry inwards" order is not to be given until an import manifest has been delivered or unless the proper officer is satisfied that there was sufficient cause for not delivering it. Section 39 prohibits the master of a vessel from permitting the loading of any export goods other than the baggage and mail bags, until an order has been given by the proper officer granting "entry outwards" to such vessel. Section 41 prescribes that an export manifest in the case of a vessel or an aircraft and an export report in the case of a vehicle should be filed by the

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person in charge of a conveyance before the departure of the conveyance from a customs station. Section 42 prohibits the departure of a conveyance which has brought any imported goods or has loaded any export goods to depart from that customs station without a written order of the proper officer. Section 43 provides that the provisions of Sections 30, 41 and 42 shall not apply to a vehicle which carries no goods other than the luggage of its occupants. Chapter VII, as we said, deals with clearance of imported goods and export goods."

20. Thereafter, the Court adverting to Section 46, as it was of primary concern, referred to Sections 53 and 54 of the Act. Section 53 makes provision for permitting goods to be transmitted without payment of duty if they are mentioned in the import manifest or import report as to be for transit in the same conveyance, to a place outside India. Section 54 of the Act deals with transshipment of goods and the requirement to furnish bill of transshipment or declaration of transshipment.

21. Subsequently, dealing with the question of levy of custom duty, the Court scanning the anatomy of Section 46 of the Act held that under the scheme of the Act the goods which are imported into India from a place outside India or enter India, can be classified as (i) goods entering for home consumption; (ii) goods entering for warehousing; (iii) goods in transit; and (iv) goods for transshipment. In case of goods in transit and goods for transshipment, no duty is required to be paid, subject to course to fulfilling the conditions mentioned in Sections 53 and 54 referred to above and Sections 55 and 56 of the Act. In such cases, there is no need to present bill of entry. Bill of entry is necessary and has to be presented in case of goods for home consumption. Goods for home consumption are required to be cleared on payment of duty. Elucidating on the issue of charge to tax, i.e., the liability to pay customs duty, the Court held as under:-

"12. Section 46(1) which we have extracted earlier requires the importer of any goods for home consumption or warehousing to present to the proper officer a bill of entry in the prescribed form. The question, which arises for consideration, therefore, is whether the vessels in the two cases before us are goods brought into India for home consumption? Mixed up with this question is the question whether a trans-shipper is an oceangoing vessel? We

A will first consider the question whether a vessel is goods so as to attract Section 46(1) of the Customs Act. By definition a vessel, aircraft or vehicle is included among goods, vide Section 2(22). But, according to Shri Setalvad, notwithstanding the definition, the scheme of Chapters VI and VII of the Customs Act and the context in which the expression "goods" is used in Section 46 of B the Act requires the expression to be interpreted for the purpose of Section 46(1) as excluding a vessel, aircraft or vehicle. In answer to a direct question by us, Shri Setalvad confessed that if a vessel, aircraft and vehicle are required to be excluded from the meaning of the expression "goods" in Section 46(1) of the Act, he was C unable to suggest what other purpose was to be served by the inclusive definition of the expression which expressly brought within its shadow "vessel, aircraft and vehicle". He frankly stated that he was unable to point out any provision in the Act into which the inclusive definition could be read. We cannot attribute redundance D to the legislature particularly in the case of a definition in a taxing statute. We must proceed on the basis that such a definition is designed to achieve a result. Under Section 12 of the Customs Act what are dutiable are goods imported into or exported from India and if goods are defined to include vessels, aircrafts and vehicles, we must take it that the object of the inclusive definition E was to bring within the net of taxation vessels, aircrafts and vehicles which are imported into India. It is undisputed and indeed it is indisputable that Section 46(1) is a prelude to the levy of duty or a first step in that direction. It must, therefore, follow as a necessary sequitur that vessels, aircrafts and vehicles are goods for the F purpose of Section 46(1). Any other interpretation may lead to most anomalous results. Under Section 15 of the Customs Act, the rate of duty and tariff valuation in the case of goods entered for home consumption under Section 46 shall be as on the date when the bill of entry is presented, in the case of goods cleared from a warehouse under Section 68 as on the date on which the G goods are actually removed from the warehouse and in the case of any other goods as on the date of payment of duty. Goods which are entered for home consumption under Section 46 and goods which are warehoused are naturally goods which are openly imported into India without concealment. The expression "other goods" mentioned in Section 15(c) is obviously meant to cover

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other imported goods such as goods imported clandestinely and goods which have otherwise escaped duty." A

22. Explicating on whether there was a difference between carriers which carry the goods and the goods, it was observed that Section 46(2) and elsewhere the word 'goods' may be used in a way that it does not include and in a contradiction to conveyances in which the goods are carried, albeit the significance of this difference depends upon the context. It would be wrong to understand that the vessels or conveyances would never be goods for the purpose of charging of duty as dutiable goods. On the question of chargeability of duty on the vessel in question, it was held:- B C

"14. The further question is whether the vessels which have been converted into trans-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 oceangoing vessels and notwithstanding that they are still capable of being used as oceangoing 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 trans-shippers to go into the open sea to reach the bulk carriers. But, in our view these operations do not make these vessels oceangoing vessels when their primary purpose and the purpose for which they were permitted to be purchased and brought to D E F G H

A 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 oceangoing vessels."

Thereafter, the Court ruled what we have already reproduced B hereinbefore.

23. As is noticeable, in the said case, the vessel was in operation and primarily used within the territorial waters of India and was not used as an ocean going vessel. As a sequitur, it was held that the vessel were "goods" imported into India for home consumption for they were C primarily to be used as a vessel in India, i.e., in the territorial waters. However, the Court was conscious and expressly guarded the said proposition clarifying that it was not pronouncing any dictum as to what would be the position if these goods (the vessel) were not intended to be primarily used in India or used occasionally for short period in India and D whether in such situation, the vessel should be treated as a good for home consumption. As the vessel in the said case was brought in India and was primarily used as a transshipper and occasionally in the open seas, it was held to be a good imported for home consumption.

24. This aforesaid authority, in our opinion, answers the contention E raised by the owner that rig in question was not meant for home consumption as the rig never entered the land mass. As long as the rig was used for operations within the territorial waters of India, the rig would meet the requirement and satisfy the condition that it was an imported good meant for home consumption. There would be no doubt on the said legal position in view of the subsequent pronouncement in F ***V.M. Salgaoncar*** (supra), wherein dwelling on the question of home consumption it was held that the expression 'consumption' does not involve complete using up of the commodity and would include putting the commodity to use to any type of utility within the territory of India. Even when this condition is satisfied, it would amount to home consumption. G The question raised in ***V.M. Salgaoncar*** (supra) was whether the vessels used as transshippers can be treated as ocean going vessels and reference was made to the larger Bench of three Judges to consider the ratio in ***Chowgule and Co. Pvt Ltd*** (supra). While deciding the said issue, it has been held as under:-

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"25. There is no dispute for the department that by design and equipment, transhippers are intended to be used mostly to carry the cargo from harbours to the high seas and vice versa. That such transhippers often move into the open sea is also not disputed by the department. Thus considering the question from all the different angles, it is reasonable to take the view that merely because transhippers are used for carrying cargo for loading into the bulk carriers (those being unable to touch the port) they cannot be excluded from the category of ocean-going vessels. At any rate it has been demonstrated by the Government that it was not very much interested in segregating transhippers from the category of ocean-going vessels as the Government brought out a new notification enveloping all vessels including transhippers within the ambit of ocean-going vessels, almost immediately after pronouncement of the decision in Chowgule & Co. (P) Ltd. That subsequent development on account of its close proximity to time cannot be overlooked as of no impact.

26. In the result we accept the contention of the owners of the trans-shippers that such vessels are entitled to the benefit of the notification dated 11-10-1958. The appeals are disposed of in the above terms."

25. The aforesaid passage refers to the Government's decision that had brought out a new notification to envelop all vessels including a transshippers within the ambit of ocean going vessels immediately after the pronouncement in ***Chowgule and Co. Pvt Ltd*** (supra).

26. The decision in ***V.M. Salgaoncar*** (supra) refers to the limits of territorial waters fixed under Section 3(2) of the 1976 Act, which is distance of 12 nautical miles from the nearest point of the appropriate baseline.

27. In ***Aban Lyod Chiles Offshore Limited and another v. Union of India and Others***[9], the view of Division Bench of the Bombay High Court in ***Pride Foramer*** (supra) was upheld. In this case the rig was operational and used outside the territorial waters limits, but in the designated areas of the continental self and exclusive economic zones, which have been declared by the notification to be a part of the territory of India for limited purpose. The natural consequence of the said

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A notification was to extend the Customs Act and the Customs Tariff Act to the designated areas outside the territorial waters to introduce the custom regime in such areas resulting in levy and collection of custom duty. The issue raised in the said case related to consumption of goods or stores imported by the drilling contractor and supplied to the rig. The B stores used for consumption onboard the oil rigs, when stationed in the notified or designated areas, which were deemed to be territorial waters, was chargeable and customs duty was payable.

28. In the case at hand, neither the adjudication order nor the order passed by the tribunal has elucidated or held that the rig in question C was in operation in the territorial waters or the designated/deemed territorial waters pursuant to the notification. The issue of chargeability and liability to pay customs duty has been on different precepts and grounds.

29. The adjudication order refers to and is predicated on the rig being brought to the port for repairs in February, 1996 for which permission D was sought from the Commissioner of Customs vide letter dated 12th February, 1996 under the provisions of notification No. 153/94 Cus. The rig subsequently moved out of the port after repairs. The rig was brought for the second time to the Mumbai port for repair on 9th November, 1996 and had remained there till 2nd December, 1996. The rig thereafter was E taken out and removed from the territorial waters of India as is evincible from the adjudication order. The rig was for the third time brought to the outer anchorage in Mumbai/Mumbai port on 9th December, 1998 and removed from the customs area. On this occasion, for the first time, the authorities felt that the rig had been imported into India when the rig was brought within the territorial waters for repairs. The adjudication order F does not record that the rig was in operation within the territorial waters of India. On the other hand, the adjudication order does not spell out that the rig did not operate outside the territorial waters of India. The contention raised by the owner in this regard was neither specifically rejected not a different finding was recorded. The finding was that the G rig when it is repaired in India, it is imported into India for home consumption. The adjudication order holds that the repairs undertaken would complete the act of import, for the requirement of home consumption was satisfied. The said finding, in our opinion, is unacceptable and faulty. Mere repair of a vessel is not putting the vessel

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to use in India and would not result in home consumption as the vessel was not utilized within the territory of India. Repairs are carried on the vessel and not to utilize the vessel. It would not amount to utilization or operation of the vessel/rig in India. Thus, it cannot be said that the vessel, i.e., the rig, was imported into India when it had anchored twice in 1996 and once in 1998 for the purpose of repair, for the element of home consumption is missing even when the vessel, i.e., the rig, had entered the territorial waters. Thus, it would be incorrect to hold that mere repair of the vessel in 1996 or in 1998 would constitute taxable import.

30. The authorities have laid emphasis on the factum that the rig was purchased for being used in the oil field of ONGC and for this purpose the owner had made an application and permission/licence for import was granted by the Ministry of Industry. The rig was purchased from foreign exchange released by the Government on the basis of the import licence for the rig. If the rig was not to be used in India, foreign exchange would not have been released and import licence would not have been granted. This argument on behalf of the department does not further the stand. It cannot be regarded as conclusive. Release of foreign exchange, approval and licence, etc. are prior to the import. Import may not take place in spite of this aforesaid clearances/licence and release of foreign exchange. There may have been violation of another enactment/provision as the rig was not imported, albeit for deciding the question whether the rig was imported into India, the requirement of home consumption has to be satisfied. Then alone, the 'good', i.e., the vessel/rig would be taxable and customs duty payable under the Act. Pertinently, the adjudication order does not hold that the import had taken place in 1987 when the rig first put into operation in the high seas. This was not treated as the date of import or home consumption. The import as per the authorities had taken place when the rig was brought for repairs. The evaluation of the rig has been done on the basis of the last visit of the rig for repair in 1998.

31. While we are disposed to accept that there was no import, we would not on the said finding hold that the owner had not violated the provisions of the Act, which are much broader and wider in scope. The Act regulates and mandates compliance by the foreign going vessels when they enter the territorial waters. Provisions of the Act are required

A to be met and complied with even when no goods are to be unloaded for import into India or the vessel is not a 'good' meant for home consumption. Thus, violations recorded by the tribunal cannot be found fault with.

32. Thus analysed, we are of the indubitable opinion, that the decision rendered by the tribunal deserves our concurrence and we so B do. Consequently, all the appeals are dismissed without any order as to costs.

Ankit Gyan Appeals dismissed.