Union Of India & Another vs V.M. Salgaoncar And Bros. (P) Ltd. Etc on 8 January, 1998

Bench: B.N. Kirpal, V.N. Khare

PETITIONER:
UNION OF INDIA & ANOTHER

Vs.

RESPONDENT:
V.M. SALGAONCAR AND BROS. (P) LTD. ETC.

DATE OF JUDGMENT: 08/01/1998

BENCH:
B.N. KIRPAL, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:

(With C.A. No. 3409 of 1987) J U D G M E N T THOMAS, J.

Whether vessels which are used as transhippers can also be treated as "ocean-going vessels" is the short but hotly mooted issue involved in these appeals. It was once decided by a Bench of two Judges of this court in Chowgule & Co. Pvt. Ltd. Vs. union India & ors., [1987 (2) SCR 351] that such vessels cannot be termed as "ocean-going vessels". Another Bench has now expressed the opinion that the ratio in the above decision requires reconsideration by a larger Bench. Thus, these matters have come up before us.

Some facts necessary for these appeals can be seated thus:

> Section 46 of the Customs Act, 1962 requires the importer of any goods, other than goods intended for transit or transhipment, to present a Bill of Entry for home consumption of such goods in the prescribed form. By a notification issued by the Ministry of Finance (Department of Revenue) Government of India on 11.10.1958, "ocean-going vessels" have been exempted from payment of customs duty. The said

notification reads thus:

> " Under Govt. of India Ministry of Finance (Dept. of Revenue), Notification No. 262-Customs dated the 11th October, 1958, ocean-going vessels other than vessels imported to be broken up, are exempt from the payment of customs duty leviable thereon. Provided that any such vessel if subsequently broken up shall be chargeable with the duty which would be payable on her if she were imported to be broken up."

Some persons who imported transhippers (vessels fitted with equipment for transhipping and topping operations) claimed the benefit of the said notification on t he premise that those transhippers are also oceangoing vessels. But the Customs authorities insisted on them to file Bills of Entry under Section 46 of the Act in respect of such vessels. The Assistant Collector of Customs ordered, in confirmation of the aforesaid stand of the customs officials, that the importers should file Bills of Entry for payment of Customs duty. Then those importers challenged the orders of the Assistant Collector. Some of them went straight to the High Court under Article 226 of the Constitution while others approached the statutory authorities up to the Customs excise & Gold (Control) Appellate Tribunal. The orders impugned before us thus relate to the question whether such transhippers are oceangoing vessels. Importers have filed the appeal challenging the decision which negatived their contention and Union of India has filed the appeals challenging those decisions which upheld the contention of the importers.

The common features in all cases are the following:

> Transhippers are vessels used for carrying cargo loaded from the harbour and they proceed to outer sea for unloading it into large vessels afloat in high seas. such transhippers have been specially fitted with adequate equipment to carry out the said task. (That operation is called topping up work.) Some of the vessels were fitted with added holdes on both sides, cranes, conveyors and other ship loading equipment designed for transfer operations.
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> In Chowgule & Co. Pvt. Ltd. (Supra), learned Judges have noted that the transhippers involved in that decision were capable of being used as ocean going vessels and were, in fact, so used during off seasons when it was not practicable to do topping up operations. those vessels are not only capable of being used but were actually used as cargo ships during off-seasons. They were structurally and technically competent to go on the high seas and they were certified to be so competent by appropriate maritime authorities. Even in the course of topping up operations during off-seasons, those transhippers have to go into the open sea to reach the bulk carners.
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> Despite all the aforesaid features learned Judges did not agree with the contention of the importers that those vessels were ocean-going vessels. the following observation is the ratio of the decision:

> " But in our view, these operations do not make these vessels ocean going vessels when their primary purpose and the purpose for which they were permitted to be purchased and brought to Indian waters, is to conduct topping up operations in Indian territorial waters and not to serve as ocean-going vessels."

Learned counsel for the importers, in the course of their arguments raised an incidental contention that transhippers were not imported for "home consumption", as the commodity remains intact, without any alteration, even after it is put to use. it was suggested that consumption would involve complete using up of the article to such an extent that identity of the consumed article becomes non-existent.

The word "consumption" may involve in the narrow sense using the article to such an extent as to reach the stage of its non-existence. But the word "consumption" in fiscal law need not be confined to such a narrow meaning. It has a wider meaning in which any sort of utilization of the commodity would as well amount to consumption of the article, albeit that article retaining its identity even after its use.

A Constitution Bench of this Court has considered the ambit of the word "consumption" in Article 286 of the Constitution in M/s. Anwarkhan Mahboob co. Vs. State of Bombay (now Maharasthra) and others [1961 (1) SCR 709]. Their Lordships observed thus:

> " Consumption consists in the act of taking such advantage of the commodities and services produced as constitutes the "utilization"

thereof. for each commodity, there is ordinarily what is generally considered to be the final act of consumption. for some commodities, there may be even more than one kind of final consumption .....

....

In the absence of any words to limit the connotation of the word "consumption" to the final act of consumption, it will be proper to think that the Constitution-makers used the work to connote any kind of user which is ordinarily spoken of as consumption of the particular commodity."

In another decision a two Judge Bench of this court considered the scope of the words "consumption" vis-a-vis "use". (vide Kathiawar Industries ltd. vs. Jaffrabad Municipality: AIR 1979 SC 1721). There it was held that the precise meaning to be given to those words would depend upon the context in which they are used. it is in a primary sense that the word "consumption" is understood as using the article in such a manner as to destroy it identity. It has wider meaning which does not involve the complete using up of the commodity.

In the context in which the expression "home consumption" is used in Section 46 of the Customs Act it does not warrant a construction that the commodity should have been completely used up. Even putting the commodity to any type of utility within the territory of India will tantamount to "home

consumption".

We would now turn to the question whether transhippers are ocean-going vessels?

In the order of reference Bharucha and Sen, JJ, have expressed that "there is, prime facie, merit in the submissions on behalf of the owners that an ocean going vessel is a vessel equipped, crewed and licensed to go out into the ocean, regardless of whether or not it actually does, and that the transhippers as shown by the record, are such vessels: also, they do, in fact go out into the ocean on their day to day business to load ore and, in the monsoon, to carry cargo to or seek refuge in other Indian or foreign ports."

It may be contextually useful to mention that soon after the decision was rendered by a two Judge Bench of this Court in Chowgule & Co. Pvt. Ltd. (Supra), a notification was issued on 19.3.1997 (which has been extracted above) exempting all the vessels (other than floating structures) from the whole of the duty of customs leviable thereon except those which are imported for the purposes of breaking up.

The contention was raised on behalf of the owners of the vessels that the close proximity of the time at which Government issued the subsequent notification is a telling circumstance that Government of India did not intend to exclude transhippers from the category of ocean-going vessels. However, Shri Gauri Shankar Murthi, learned counsel for the Revenue forcefully contended that the transhippers cannot get the benefit of the first notification at least until the Government of India issued the second notification dated 19.3.1997.

The expression "ocean-going vessels", unfortunately, has not been defined in the notification dated 11.10.1958 and that vacuum created room for this dispute. However, Customs Act contained definition for the term "foreign going vessel" in Section 2(21), as a vessel engaged in carriage of goods or passengers between any port in India and any port outside India and includes "any vessel engaged in fishing or any other operations outside the territorial waters of India."

The limit of territorial waters is fixed under Section 3(2) of the Territorial Waters Continental Self, exclusive Economic Zone and other Maritime Zones Act, 1976 (Act No. 80 of 1976) thus: "The limit of territorial waters is the line every point of which is at a distance of twelve nautical miles from the nearest point of the appropriate pasenne."

We find much force in the contention of the learned counsel for the owners that, if a vessel which is engaged in fishing or any other operations outside the territorial waters of India, though not crossing into the territorial waters of any other foreign country, could legitimately be included in the category of foreign going vessel, how a transhipper which often goes into the open sea for transhipping operations cannot be regarded as an ocean-going vessel?

Shri Murthi, learned counsel for the Revenue contended that the use of transhippers is not for going beyond the limit of territorial waters and the ambit of the expression "ocean-going " could be judged on the test of its dominant use notwithstanding that it may just into the open sea infrequently. In

support of the above proposition, learned counsel relled on the decision of this Court in Good year India Ltd. vs. Union of India [1997 (92) ELT 14 = 1997 (5) SCC 752]. Learned senior counsel, who argued for the owners of transhippers on the other hand contended that while interpreting the meaning of words in fiscal connotations, meanings attached to such expressions by people conversant with the subject should normally be adopted.

A three Judge Bench of this court in Dunlop India Ltd. vs. Union of India & ors., [1976 (2) SCR 98] has observed thus:

> " It is well established that in interpreting the meaning of words in a taxing statute, the acceptation of a particular word by the Trade and its popular meaning should commend itself to the authority.
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> xxxxx xxxxxxxxx xxxxxxxxxxx It is clear that meaning given to articles in a fiscal statute mush be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. But once an article is classified and put under a distinct entry, the basis of the classification is not open to question. Technical and scientific tests offer guidance only within and known in common parlance, we then wee no difficulty for statutory classification under a particular entry."

We do not think that, in the present case, the question whether a transhipping vessel is an ocean-going vessel, can solely rest on the test of its dominant use to which their owners put them at times. Use may vary from season to season, port to port and also managers to managers. So in this area of understanding use of the article stands down- staged, and the court must look at to know what actually the commodity is.

In the Merchants Shipping Act, 1958 the expression "sea-going vessels' is used and defined it in Section 3(41), like this"

> " Sea-going", in relation to a vessel means a vessel proceeding to sea beyond inland waters or beyond waters declared to be smooth or partially smooth waters by the Central Government by notification in official gazette."

Though an endeavour was made before the Tribunal to show that there is a shade of difference between the two words "sea" and "ocean", we are not disposed to attach much emphasis on the nuances in the semantics now. For all practical purposes the words "sea" and "ocean" are two expressions of the same geographical feature concerning the vast body of salt water one side of which appears as horizon from the other. Hence we have no doubt that what is meant by the expression "ocean-going vessels" is not qualitatively different from "sea-going vessels", indeed the latter may include the former.

How an ocean-going vessel is understood in maritime enterprises can now be looked into. In the shorter Oxford dictionary, it is shown as "a ship capable of crossing oceans". In the Random House

Dictionary, it is shown as" a ship designed and equipped to travel on the open sea". In the Collins Dictionary of English Language, it is defined as " a ship suited for the travel on the open sea".

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 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. Pvt. Ltd. (Supra). That subsequent development on account of its close proximity of time cannot be overlooked as of no impact.

In the result we accept the contention of the owners of the transhippers that such vessels are entitled to the benefit of the Notification dated 11.10.1958. The appeals are disposed of in the above terms.