A K.T.V. HEALTH FOOD PVT. LTD.

v.

UNION OF INDIA AND ORS.

CIVIL APPEAL NO.3626 OF 2020

B FEBRUARY 01, 2023

[K. M. JOSEPH, B. V. NAGARATHNA AND J. B. PARDIWALA, JJ.]

Environment Protection Act, 1986 – 2011 Notification issued under the 1986 Act – Respondent No.1 granted ex post facto C *clearance to the appellant purportedly invoking paragraph-4.3 of the aforesaid Notification, for laying of pipeline for the transfer of edible oil from the Chennai Port to the storage terminal tank and for the establishment of the storage transit terminal – NGT held that the activity of putting up a storage tank transit terminal being* D *contrary to the 2011 Notification was illegal as the storage terminal was not located 'in' the Chennai Port, in which case alone, it would have been permissible under the permitted activities of Coastal Regulation Zone II – Construction of the storage facility and the pipeline were directed to be removed, environmental compensation imposed – Appellant* inter alia *contended that CRZ-II being less* E *sensitive than CRZ-I, in CRZ-I, the "storage of edible oil inter alia is permitted within the notified ports" while, in CRZ-II, storage of non-hazardous cargo such as edible oil, fertilizers and foodgrain is permitted 'in notified ports' – And since the word 'within' which is used in CRZ-I is not employed in regard to the similar activity in* F *CRZ-II and instead the word 'in' is used, they must receive a different meaning – Held: Objects of the notification include guarding against the dangers of natural hazards in coastal areas and the sea level rise due to global warming – The coastal regulation appears to be based on considerations which appear to accommodate conflicting interests premised on considerations of what is felt as indispensably* G *necessary and the nature of the zone in question – Words 'within' and 'in' cannot include what is outside the port – The maker of the notification has not even contemplated the activities in question in a 'port area' – A storage tank cannot be permitted outside the port limits – If the same is allowed, it will introduce chaos – Question would arise as to up to what distance from the port area it would be* H

considered as the 'in the port area' – The 2011 Notification cannot receive an interpretation which would leave matters of moment to be afflicted with the vice of uncertainty – As far as the pipeline is concerned, it is located in a zone where it is permitted activity – As to whether the pipeline can continue to be used if the storage tanks are demolished is a matter which must engage the attention of the authorities – Appellants may approach the relevant District Coastal Zonal Management Authority – Appellants given six months period to demolish the storage tanks to comply with the impugned order of the NGT – Appellant in the first appeal to pay the compensation ordered within a month – Major Port Trust Act, 1964 – s. 35 – Customs Act – ss.2(11), (12), (13), 7(a), 57 – Indian Ports Act, 1908 – National Green Tribunal Act, 2010.

Customs Act – ss.7(a), 57 – Indian Ports Act, 1908 – Major Port Trust Act, 1964 – s. 35 – Held: Every port falling under the Indian Port Act and the Major Port Act may not be on their own become a customs port – A customs port u/s.2(12) comes into being on a port being appointed as such u/s.7(a) – The case of the appellant based on the license u/s.57 of the Customs Act may make it a customs area as it includes a warehouse but, it is inconceivable as to how it would transform it into 'in a notified port' – Environment Protection Act, 1986.

Partly allowing the appeals, the Court

HELD: 1.1 The Central Government declared certain areas as Coastal Regulation Zone ('CRZ'). The CRZ in the First Clause consists of the land area from high tide line to 500 meters on the land along the sea front. The High Tide line is the line based on the highest water mark during the spring tide. We may only further notice that among the other 4 categories of CRZ, the CRZ includes the water and the bed area between the LTL (LOW TIDE LINE)(which line is based on the lowest height of the water body during the spring tide) to the territorial water limit (12 nautical miles) in the case of the sea and the water bed and area between the LTL at the bank to the LTL on the opposite of the bank of the tidal influenced water bodies. CRZ has been classified under para 7 into CRZ I, CRZ II, CRZ III, CRZ IV and CRZ V. This Court is concerned with CRZ II. Paragraph-3 provides for prohibited activities within CRZ. This Court may notice that it is divided

into 14 categories and the noticeable feature is that certain exceptions to the prohibitions are also declared. Of relevance to the cases before us, are certain Clauses in paragraph-3. [Paras 21 and 22][262-F-H; 263-A-B, E]

1.2 Paragraph-3(xi) provides for prohibition of construction activity in CRZ1 except those specified in para 8 of the notification. This Court need not be detained with various others clauses. Regulation 4 deals with permissible activities in CRZ area. It is declared that activities which are enumerated under paragraph-4 shall be regulated except those prohibited in paragraph-3. This means what is prohibited in paragraph-3 cannot either be permitted or regulated within the meaning of paragraph-4. Since Clause 2 of paragraph-4 provides that the activities described thereunder would require clearance from MoEF, the question would arise as to whether for the other activities, which are permissible, does it require clearance? Paragraph-4.2 provides the answer. It provides for the procedure for clearance of permissible activities. Various formalities have to be undergone. Originally, the 2011 notification did not provide for any *ex post facto* approval. It is in the year 2018, i.e., on 09.03.2018 that paragraph-4.3 came to be inserted in the 2011 Notification. It will at once be noticed that thereunder violation of 'norms' would disentitle a person to post facto clearance. The norms are laid down in Paragraph-8. Paragraph-8 provided for regulation of activities permissible under the 2011 Notification. It declares that the development or construction activities in different categories of CRZ shall be regulated by the concerned CZMA in accordance with the norms. [Paras 27-29][264-G-H; 266-F-G; 267-D-E]

1.3 CRZ-III, comprised of area up to 200 meters from HTL on the landward side in the case of sea front inter alia. It is marked as the NDZ [or No Development Zone}. It was, *inter alia*, provided that NDZ shall not apply "in such area falling within any notified port". There are various restrictions therein. Certain activities were shown as permitted activities in the NDZ. They included in Clause (e) facilities for receipt and storage of petroleum products and liquified gas as specified in Annexure-II. Interestingly, in regard to the area between 200 meters to 500 meters falling in CRZ-III, paragraph-8 permitted storage of non-hazardous cargo

such as edible oil, fertilizers, foodgrains 'in' notified ports. [Para 31][269-D-E]

1.4 It will be noticed that the Certificate is silent as regards the storage facility and it being in the port. The Certificate does not exactly declare that there is no space at the Chennai port. Appellants may be correct in contending that edible oil is not hazardous and that edible oil imports may be necessary to meet the requirement of a growing population. It may be true that there is no manufacturing process which may be involved in constructing or maintaining the storage facility. [Para 35][270-G-H; 271-A]

1.5 A perusal of the 2011 notification reveals the following as the avowed objects: (i) ensuring livelihood security to the fisher communities and other communities living in the coastal areas, (ii) conservation and protection of coastal stretches; (iii) the protection of the unique environment of the coastal stretches and its marine area; (iv) promotion or development through sustainable manner based on scientific principles taking into account the dangers of natural hazards in the coastal areas; (v) the aspect of sea level rise due to global warming. Therefore, This Court is unable to agree with the appellants that as the laying of the pipeline would result in greater efficiency in the functioning of the port or for that matter, it would reduce the traffic congestion, and what is more, thereby there would be a reduction in the pollution may not by itself be relevant or for concluding the issue. It is the duty of the Court to glean the true object of a law and give effect to it. It is equally the duty of the Court to eschew from its consideration matters which may not be strictly germane to the object. [Para 36][271-C-F]

1.6 In paragraph- 8(I)(i)(b), construction of pipelines, inter alia, was permitted. It is thereafter that in paragraph-8(II), under CRZ-II, Clause VI contemplated permitting of storage of non-hazardous cargo, such as edible oil, fertilizers and food grain 'in' notified ports. We may broaden our inquiry into the relevant contents of CRZIII. CRZ-III of the 2011 Notification was divided into area 'A', which, inter alia, dealt with areas up to 200 meters from HTL on the landward side in the case of sea front. The said Clause proclaimed further that the said area would be a No

Development Zone (NDZ). This Court notices that in CRZ-III the NDZ was not to be applicable in 'such areas' within any port limits. Thus, the expression 'within' made its appearance in relation to notified port limits again. In the permitted activities in the NDZ under area 'A', viz., up to 200 meters as aforesaid, this Court finds Clause (e), which permitted facilities for receipt and storage of petroleum products and liquified petroleum gas as specified in Annexure-II. Area B of CRZ-III is described as the area comprised from 200 meters to 500 meters. Since the CRZ itself would terminate upon the 500 meters distance being obtained, this constituted, in other words, the residuary area, of CRZ-III. Under the same we notice that again facilities for receipt and storage of petroleum products and liquified natural gas as specified in Annexure-II was permitted. This Court may bear in mind that the very same activity had also been contemplated in area A of CRZ-III, viz., the area comprised to 200 meters of the high tide line of the landward area in the case of the sea front, inter alia. Interestingly, when it comes to storage of nonhazardous cargo, such as edible oils fertilizers and food grain 'in' the notified ports, it was permitted activity in area 'B' of CRZ-III under Clause 4 thereof, that is, an area located between 200 metres to 500 metres. It must be noticed that CRZ-III had been classified in paragraph-7 essentially as relatively undisturbed area, which did not belong to either CRZ-I or II, which included the coastal zone in rural areas, both developed and undeveloped and also areas within municipal limits or in other legally designated urban areas, which were not substantially built up. This Court has already noticed the classification of CRZ-II earlier, as areas which had been developed up to or close to the shore line. Can it then be said that storage of non-hazardous cargo, such as edible oil, fertilizers food grain, permitted in the notified ports in CRZ-III, Area 'B', be also permitted in CRZ-III Area 'A'? Going by the contents of CRZ-III under activities which were permitted in the NDZ, we are unable to find any clause which permitted such storage of non-hazardous cargo including edible oil, inter alia. Therefore, in the NDZ area falling under area 'A' of CRZ-III, it may have been impermissible. [Para 42][274-E-H; 275-A-E]

1.7 Going by the definition of the word 'in', it includes 'so as to be enclosed, surrounded or inside'. One way of looking at

the word 'in' the notified port in para 8(II)(vi) would be that storage of non-hazardous material is permitted inside the notified port. This Court notices that the definition of the word 'within' also includes the word meaning inside. No doubt, Justice Oliver Wendell Holmes declared: "A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and time in which it is used." [Para 45][276-G-H; 277-A]

1.8 Chennai Port is a Port, which is, admittedly, a major port within the meaning of Major Ports Act, 1964. Another enactment, which deals with ports, is the Indian Ports Act, 1908. The appellants would contend that, while the storage facility may not be located within the Chennai Port, it is licenced under Section 57 of the Customs Act as a customs station. In the Major Ports Act, the word 'port' is defined in Section 2(q). [Para 47][277-D-E]

1.9 It is not the case of the appellants that the storage is located within the limits of the Chennai Port as contemplated in Section 2(q). It is, therefore, not inside the said Port. However, it is appellants case that the storage facility is located in the Customs notified area. This is based on the license issued under Section 57 of the Customs Act. Thus, every port falling under the Indian Port Act and the Major Port Act may not be on their own become a customs port. A customs port under Section 2(12) comes into being on a port being appointed as such under Section 7(a). A customs station no doubt, includes any customs port and a land customs station. The case of the appellant based on the license under Section 57 of the Customs Act may make it a customs area as it includes a warehouse but it is inconceivable as to how it would transform it into 'in a notified port'. [Paras 49 and 52][277-H; 278-A; 279-A-B]

1.10 CRZ-II has been classified in para 7 as areas that have been developed up to or close to the shore line. The storage tank of the appellant in the first case appears to be located at a distance of 160 feet from the shore line. At the same time, it is located a few kilometres away from the Chennai port. This Court has already noticed that under CRZ III, the facility of storage of non-hazardous materials including edible oil is permitted only at

a distance between 200-500 meters. This is even though both handling and storage of petroleum products is permitted, both within a distance of up to 200 meters from the high tide line as also between 200-500 meters from the high tide line. It may defy logic. At least at first blush. This Court has already set out the objects of the notification. They include guarding against the dangers of natural hazards in coastal areas and the sea level rise due to global warming. This is no doubt also to be balanced with the need for sustainable development. The coastal regulation appears to be based on considerations which appear to accommodate conflicting interests premised on considerations of what is felt as indispensably necessary and the nature of the zone in question. Allowing storage facilities for non-hazardous activities like edible oil, is, apparently, considered as an indispensable part of the operation of a port. The Port Authorities would have full control over the storage facility located within its limits. No doubt, Section 35 of the Major Port Trust Act, 1964, *inter alia,* empowers the port to execute works outside its limits for securing and storing goods to be landed or to be shipped. The storage tanks in question are not works executed by the port. [Para 55][280-A-F]

1.11 Paragraph-8(I)(i)(b), undoubtedly, related to permitting of pipelines being constructed in CRZ-I. Paragraph-8(I)(ii) related to CRZ-I. The further reference is only to paragraph 8(II)(vi) which permits the activity in question 'in' notified ports. The aspect relating to buildings being permitted on the landward side of the existing road dealt with in paragraph 8(II)(i) was not the basis for the decision even according to the counter affidavit. This is apart from the fact that impugned decision of the first respondent does not proceed on the basis of paragraph 8 (II)(i). This is also apart from noticing the contention of Respondent No.5 that storage facility being specifically dealt with, 'building' under paragraph-8(II)(i), would not include storage facility. We would therefore, think that we must not be persuaded to allow the appellants or allow them to lean on paragraph 8(II)(i) of the 2011 Notification. The authorities are experts. They have applied their minds. Their understanding should govern. At least, it should be given the weight that is due to them. [Paras 57 and 58][281-B-E]

1.12 That the authorities have proceeded on a particular basis, may as well betray their erroneous understanding. That such views do not clinch the issue relating to the construction of the law is elementary. This Court would think that in the facts of this case and on a construction of the statute or the law in question, *viz.*, the 2011 notification, the understanding of the authorities if that be the basis of the contention, cannot overwhelm our understanding of the notification. This Court again reiterate that the words 'within' and 'in' cannot include what is outside the port. The maker of the notification has not even contemplated the activities in question in a 'port area'. This Court must here elucidate and observe that if the contention is to be upheld that a storage tank can be permitted outside the port limits, it will introduce chaos. The question would arise as to up to what distance from the port area it would be considered as the 'in the port area'. The 2011 Notification cannot receive an interpretation which would leave matters of moment to be afflicted with the vice of uncertainty. This is apart from the importance of avoiding an interpretation which seemingly allows free play in the joints to the Administrator but, at the same time, vest an arbitrary power in him. *Ex post facto* permission can be given for permitted activity as found by the NGT itself. No doubt, the pipeline, may have meaning only as so far as it is connected to the storage tank. As to whether the pipeline can continue to be used if the storage tanks are demolished is a matter which must engage the attention of the authorities. In regard to the pipelines, it would be the District Coastal Zonal Management Authority, which could take a decision. [Para 59 and 60][283-A-D, F-G]

1.13 As regards the pipelines which have been drawn, the appellants may approach the relevant District Coastal Zonal Management Authority within a period of one month from today. The District Coastal Zonal Management Authority will consider any application made in regard to the continued use of the pipeline and take a decision in accordance with law within a further period of six weeks from the date of the receipt of the application. The appellants are accordingly given a period of six months from today to comply with the impugned order of the NGT. This is in regard to the direction to demolish the storage tanks. The appellant in

A **the first appeal is given a month's time to pay the compensation ordered, if not already paid.[Paras 61 and 62][283-G-H; 284-A-C]**

M. Nizamudeen v. Chemplast Sanmar Limited and Others **(2010) 4 SCC 240 : [2010] 3 SCR 315;** *Goa Foundation* B *v. Union of India in Writ Petition* **(Civil) No. 460 of 2004;** *Electrosteel Steels Limited v. Union of India and Others* **(2021) SCC OnLine 1247;** *Pahwa Plastics Pvt. Ltd. and Another v. Dastak NGO and Others* **(2022) SCC OnLine SC 362;** *Gajubha Jadeja Jesar v. Union* C *of India and Others* **(2022) SCC OnLine SC 993;** *Alembic Pharmaceuticals Ltd. v. Rohit Prajapati and Others* **(2020) 17 SCC 157;** *K.P. Varghese v. Income Tax Officer, Ernakulam and Another* **1981 (4) SCC 173 : [1982] 1 SCR 629;** *Indian Council for Enviro-Legal Action v. Union of India* **(1996) 5 SCC 281 : [1996] 1** D **Suppl. SCR 507;** *S. Jagannathan v. Union of India and others* **(1997) 2 SCC 87 : [1996] 9 Suppl. SCR 848;** *Piedade Filomena Gonsalves v. State of Goa* **(2004) 3 SCC 445 : [2004] 2 SCR 1135;** *Vaamika Island (Green Lagoon Resort) v. Union of India* **(2013) 8 SCC 760 : [2013] 17 SCR 965;** *Kapico Kerala Resorts (P) Ltd. v.* E *State of Kerala* **(2020) 3 SCC 18 : [2020] 1 SCR 909;** *Kerala State Coastal Zone Management Authority v. State of Kerala* **(2019) 7 SCC 248 : [2019] 8 SCR 625 – referred to.**

Case Law Reference

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[2010] 3 SCR 315	**relied on**	**Para 12**
[1982] 1 SCR 629	**referred to**	**Para 16**
[1996] 1 Suppl. SCR 507	**referred to**	**Para 19**
[1996] 9 Suppl. SCR 848	**referred to**	**Para 19**
[2004] 2 SCR 1135	**referred to**	**Para 19**
[2013] 17 SCR 965	**referred to**	**Para 19**
[2020] 1 SCR 909	**referred to**	**Para 19**
[2019] 8 SCR 625	**referred to**	**Para 19**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No.3626 of 2020.

From the Judgment and Order dated 30.09.2020 of the National Green Tribunal, Southern Zone, Chennai in Appeal No.04 of 2019.

With

Civil Appeal No.3639 of 2020

Ranjit Kumar, Dhruv Mehta, Sr. Advs., R.Sarvana Kumar, R.Jawahar Lal, Siddharth Bawa, Anuj Garg, Mohit Sharma, Mayank Kshirsagar, Advs. for the Appellant.

Ms. Aishwarya Bhati, A.S.G., Amit Anand Tiwari, A.A.G., Ms. Anitha Shenoy, Sr. Adv., Ritwick Dutta, Ms. Srishti Agnihotri, Ms. Ayushma Awasthi, Ms. Sanjana Grace Thomas, Ms. Namrata Sarah Caleb, Ms. Itisha Awasthi, Ms. Sruthi K., Ms. Mantika Vohra, Gurmeet Singh Makker, Ms. Archana Pathak Dave, Navanjay Mahapatra, Chinmayee Chandra, Ms. Preeti Rani, Dr. Joseph Aristotle S., Ms. Devyani Gupta, Ms. Tanvi Anand, Shobhit Dwivedi, T. R. B. Sivakumar, Advs. for the Respondents.

The Judgment of the Court was delivered by

K. M. JOSEPH, J.

1. The Appeals are lodged under Section 22 of the National Green Tribunal Act, 2010.

C.A. NO. 3626 OF 2020 (THE FIRST APPEAL)

2. The appellant challenges the Order passed by the National Green Tribunal (NGT), Southern Zone. By the impugned Order, the NGT has allowed the appeal filed by Respondent No.5 and set aside proceedings dated 08.03.2019. By the said proceedings, Respondent No.1 had granted ex post facto clearance purporting to invoke paragraph-4.3 of the Notification issued in the year 2011 (hereinafter referred to as, 'the 2011 Notification') under the Environment Protection Act, 1986 (hereinafter referred to as, 'the Act'). By the said clearance, the appellant was given clearance for the laying of pipeline for transfer of edible oil from the Chennai Port to the storage terminal tank and for the establishment of the storage transit terminal of the appellant. The NGT has found that while the ex post facto clearance could be granted under

paragraph-4.3, and that it would have prospective operation, however, the activity of putting up a storage tank transit terminal, being contrary to the 2011 Notification, the same was illegal. It was found to be illegal in turn, on the ground that the storage terminal was not located 'in' the Chennai Port, in which case alone, it would have been permissible under the permitted activities of Coastal Regulation Zone II (for short,'CRZ II').

THE FACTS

3. The appellant is in the business of processing and refining edible oil. Towards the said business, the appellant imports edible oil. The edible oil is imported through the Chennai Port. On 05.11.2014, in the public auction, the appellant purchased an existing storage facility. It was located at Old Door No. 4061/A and New Survey No. 4061/2 in the Ennore Expressway. The appellant thereafter, according to it, started the process to seek approvals for laying an underground pipeline of 4.5 kilometres to the said storage facility. On payment of Rs.5097921/-, the Chennai Fishing Harbour Management Committee granted permission to lay the underground pipeline. The NHAI granted permission to lay the underground pipeline. On 03.03.2015, allegedly based on inspection of the storage facility, and on payment of charges, including service tax, the Chennai Port Trust granted permission for laying the underground pipeline from the Chennai Port to the storage facility. On 10.07.2015, purporting to act under paragraph-4 of the 2011 Notification, the appellant made a proposal to the District Coastal Management Authority, Chennai (hereinafter referred to as 'the DCZMA'). It would appear that the said Body recommended the proposal. The third respondent, viz., the Tamil Nadu State Coastal Zonal Management Authority (hereinafter referred to as, 'the State Authority') considered the proposal and it forwarded the same through the second respondent, viz., the State of Tamil Nadu to the first respondent, viz., the Union of India, in the Ministry of Environment and Forests and Climate Change. Respondent No.4, viz., the Expert Appraisal Committee, CRZ, sought two clarifications. On 24.08.2016, the Chennai Port Trust issued a Certificate and permitted the laying of the pipeline, which, according to the appellant, was based on the need to avoid usage of tanker lorries and as it resulted in better handling of vessels at the Port. While the recommendation of the third respondent was pending before the first respondent, appellant started laying the pipeline with the prior permission of the NHAI, the Chennai

Fishing Harbour Committee and the Port Trust. On 19.10.2016, Respondent No. 5 filed O.A. No. 238 of 2016 against the activities of the appellant in question. A Local Commissioner was appointed, who inspected the Facility. We may, at this juncture, notice the following physical features noticed during the inspection.

> "1) The premises of the 12th Respondent (in A. No. 238 of 2016), M/s. KTV Health Foods Pvt. Ltd., is situated at No.1,2,3, Suriyanarayana Chetty Street, Tondiarpet, Chennai- 600 001, facing the Bay of Bengal. In between the premises of the 12th respondent and Bay of Bengal, the State Highway (Ennore Express Highway) runs North to South. The State Highway measures about 120 Feet in width and from the road, there is a space of about 40 Feet up to the sea shore. Thus, the distance between the entrance of the 12th respondent and the seashore is about 160 Feet."
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> [The appellant was the 12th Respondent]

4. The NGT disposed of the said O.A. noting that the storage facility was closed and that till the first respondent took a decision, no activity will be carried out. It would appear that Respondent No. 4 recommended the proposal for CRZ clearance, subject to certain conditions. This was even after finding that there was no provision in the 2011 Notification, but taking inspiration from the provisions of the 2006 Notification.On 06.02.2018, the 2011 Notification was amended by the insertion of paragraph-4.3. Based on the said amendment, the State Authorities recommendations were called for. On 27.12.2018, the storage facility was inspected by the DCZMA. The Tamil Nadu State Pollution Control Board, it would appear, intimated the third respondent that except for not obtaining prior clearance, there was no other violation. Accordingly, the State Authority recommended the proposal. It is on this basis, the first respondent granted post facto clearance by proceedings dated 08.03.2019. The appellant obtained consent to operate from the Pollution Control Board. On 08.04.2019, the fifth respondent filed the appeal before the NGT and the NGT has allowed application, as already noticed.

CIVIL APPEAL NO. 3639 OF 2020 (THE CONNECTED APPEAL)

5. The appellant-company is a sister concern of the appellant in the first Appeal. It has also constructed a storage facility, being engaged

in the business of edible oil, for the purpose of storing the imported edible oil at a distance of nearly 600 meters from the location of the storage tank of the appellant in the first Appeal. It has also drawn a pipeline from the storage tank to the facility it has put up for storing edible oil, for transmission to its factory. We must mention here that the idea was to import edible oil, unload it at Chennai Port, take the edible oil by a pipeline to the storage facility and from there, transmit the same by tanker lorries to their factories, wherein the manufacturing activities were being carried out.

6. The issues arising in both the Appeals are common and, hence, we discuss the issues with reference to the first Appeal.

THE SALIENT FEATURES OF THE ORDER DATED 08.03.2019 BY THE FIRST RESPONDENT

7. The salient Features of the Order dated 08.03.2019 passed by the First Respondent:

i. The site falls in CRZ II.

ii. Five number of storage tanks have been installed.

iii. Permissions has been obtained from the Chennai Port Trust, NHAI and the Harbour Management Committee.

iv. The project will reduce traffic to the Chennai Port Trust.

v. As per CRZ Notification, vide para 8, storage of non-hazardous cargo such as edible oil, fertilizers and food grain can be established 'only in notified ports'.

8. There are other aspects and specific conditions, apart from general conditions. It is also made clear that the clearance is subject to the final Order of this Court in the matter of *Goa Foundation v. Union of India* in Writ Petition (Civil) No. 460 of 2004.

THE IMPUGNED ORDERS

9. The NGT found merit in the contention of the appellants that the first respondent had the power to grant ex post facto clearance. However, it would have only prospective operation. The clearance could, however, be supported, if the activity which was permitted, was one, which was contemplated under the 2011 Notification. The Tribunal went

on to note that the storage facilities were not located 'in' the Chennai Port. In fact, it was on the basis that under paragraph-8 of the 2011 Notification, storage of edible oil, *inter alia*, was permissible 'in' the limits of a notified port. The attempt of the appellants to support the clearance with reference to the fact that under permitted activities in CRZ I, storage of non-hazardous cargo, including edible oil, was permitted 'within' the limits of a port anda distinction, therefore, existed between the words 'within' and 'in', did not find favour with the NGT. It was the contention of the appellants that being two different words and a meaningful interpretation being warranted in the case of CRZ I, the activity to be permitted had to be strictly within the limits of the port. Both, taking into account the difference in the words used, as also the fact that CRZ II contemplated a less harsh regime, the case of the appellants was that a purposeful interpretation would warrant the view that the storing of the edible oil in the CRZ II area, could be permitted even outside the limits of the port. It is this argument that failed.

10. The NGT has found the impugned Order of the first respondent illegal. The construction of the storage facility and the pipeline were directed to be removed. The appellant in the first appeal was directed to pay environmental compensation in a sum of Rs.25 lakhs. We may only elucidate that the appellant in the connected appealhad initially succeeded before the Tribunal. However, it was after allowing a Review Petition, which decision was not challenged and, on hearing the Appeal again, that the present impugned Order came to be passed.Noting that the appellant in the connected case was earlier visited with environmental compensation, no compensation was imposed on it.

11. We heard Shri Ranjit Kumar, learned Senior Counsel for the appellant in the first appeal and also Shri Dhruv Mehta, learned Senior Counselfor the appellant in the other appeal. We further heard Ms.Anitha Shenoy, learned senior Counsel on behalf of respondent No.5 and Shri Anand Tiwari, learned Counsel on behalf of respondents 2 and 3. We also further heard Mr. Archana Pathak Dave, learned Counsel on behalf of Union of India.

12. Shri Ranjit Kumar, learned Senior Counsel would submit that the appellant was engaged in the manufacture of edible oil. In order to avoid the traffic snarls and the congestion it caused in the Chennai Port, it was the Chennai Port itself which suggested that the appellant may

draw the pipeline from the Port area so that the edible oil which was downloaded on import could be taken to a storage facility and from there carried to the factory of the appellant. He would submit that the provisions of 2011 Notification would reveal that paragraph-3 declares activities which are prohibited. The storage tank has been put up in CRZ-II area. There are construction activities permitted in CRZ-I area which is the most fragile area. He would take us through the Notification and point out that on a combined reading of paragraphs-3, 4, 7 and 8, the following will be the upshot.In regard to CRZ-II, it is less sensitive than CRZ-I.In CRZ-I, the "storage of edible oil inter alia is permitted within the notified ports". In CRZ-II on the other hand, storage of non-hazardous cargo such as edible oil, fertilizers and foodgrain ispermitted 'in notified ports'. Since the word 'within' which is used in CRZ-I is not employed in regard to the similar activity in CRZ-II and instead the word 'in' is used,the principal contention is that they must receive a different meaning. He would further contend that this Court may adopt purposive interpretationand, in this regard, he drew our attention to the judgment of this court in *M. Nizamudeen v. ChemplastSanmar Limited and Others*[1]. The words 'in notified ports', occurring in pargraph-8 (II) (vi) of the 2011 Notification must be construed to mean "in or around the notified ports".He would submit that storage tanks have been constructed not within the Chennai Port but on a purposive interpretation, the storage tank must be treated as "in" the Chennai Port though it isnot inits notified limits. The storage container was located in the Customs Notified Area of the Chennai Port. He would contend that CRZ-II even permits facility for the storage of petroleum products and liquified natural gas.If that is so, he poses the question that having regard to the fact that CRZ-II generally provides for a less harsh regulatory regime and CRZ-I, it may result in an absurdity to not permit storage of non-hazardous cargo which includes edible oil in CRZ II. He would refer to the company that edible oil keeps in the clause,namely, fertilizers and foodgrains. He would point out that it may be absurd to disallow storage of foodgrains, fertilizers and edible oil in CRZ-II. This is all the more reason to place awider meaning on the word 'in' the notified port.

13. Shri Ranjit Kumar, learned Senior Counsel, drew support from the decisions of this Court as indicated herein. In Electrosteel Steels Limited v. Union of India and Others[2], this Court held that the Act does

[1] (2010) 4 SCC 240

[2] (2021) SCC OnLine 1247

not prohibit grant of ex post facto environmental clearance. It also held that the Court cannot be oblivious to the interest of the economy or need to protect the livelihood of hundreds of employees and others employed in the project, if such project complies with environment norms.

14. The said view has been followed in the judgment in *Pahwa Plastics Pvt. Ltd. and Another v. Dastak NGO and Others*[3] and *Gajubha Jadeja Jesar v. Union of India and Others*[4]. It is, therefore, contended that there was no occasion for the NGT to interfere.

15. Relying on the Judgment in *Alembic Pharmaceuticals Ltd. v. Rohit Prajapati and Others*[5], it is contended that the impugned Order does not do justice to the Principle of Proportionality. It is pointed out that in the said case, on payment of environmental compensation, the industry was permitted to continue.

16. Shri Dhruv Mehta, learned Senior Counselin the other case would adopt the arguments. He would further contend that the principles of *contemporaneous exposito* are attracted.In this regard, Shri Dhruv Mehta, learned Senior Counsel sought to draw considerable support from the decision of this Court in *K.P. Varghese v. Income Tax Officer, Ernakulam and Another*[6]. This is on the basis that the understanding of all the authorities including respondent No.1 in the impugned Order is that construction of the container for storage facility is permissible under CRZ-II. The Tribunal clearly erred in interfering with the views of all the authorities.

17. Shri Dhruv Mehta, learned Senior Counsel, would also contend that the matter may be viewed in the context of Principles of Sustainable Development and Polluter Pays Principle.

18. Shri Anand Tiwari, learned counsel appearing on behalf of respondent 2 and 3 would also support the appellants.He would contend that a purposive interpretation is to be placed. Smt. Archana Pathak Dave, learned Counsel for the Union of India equally supported the stand of the Government of India.

19. Smt. Anitha Shenoy, learned Senior Counsel appearing on behalf of respondent No.5 strongly supported the order of the NGTand submits

[3] (2022) SCC OnLine SC 362
[4] (2022) SCC OnLine SC 993
[5] (2020) 17 SCC 157
[6] 1981 (4) SCC 173

A that the matter relates to the defending of the environment. In constructing outside the limits of the notified port, a fact, which is not disputed by the appellant, there is an indefensible violation of a law which subservesa salutary and sublimeobject.She would draw support from the body of case law consisting essentially of the views of this Court indicating that this Court has firmly set its face against the trampling of law relating to
B the environment [See *Indian Council for Enviro-Legal Action v. Union of India*[7], *S. Jagannathan v. Union of India and others*[8], *Piedade Filomena Gonsalves v. State of Goa*[9], *Vaamika Island (Green Lagoon Resort) v. Union of India*[10], *Kapico Kerala Resorts (P) Ltd. v. State of Kerala*[11], *Kerala State Coastal Zone Management Authority v.*
C *State of Kerala*[12]]. She would submit the word 'in' cannot mean 'out'. In other words, it certainly cannot countenance the storage facility being located outside the notified port. In the facts of this case, it is at quiet a long distance from the Chennai Port and the laws relating to environment should be strictly construed.

D **ANALYSIS**

20. The 2011 Notification has been issued under Section 3 of the Act. The first notification in regard to the notification of Coastal Zone was issued in the year 1991. There were amendments. It is thereafter that the notification was issued in the year 2011. The 2011 notification
E came to be published on 6th January, 2011. We may indicate that, in fact, the notification which holds the field today was issued in the year 2019.

THE SCHEME OF THE 2011 NOTIFICATION

21. The Central Government declared certain areas as Coastal
F Regulation Zone ('CRZ', for short). The CRZ in the First Clause consists of the land area from high tide line to 500 meters on the land along the sea front. The High Tide line is the line based on the highest water mark during the spring tide. We may only further notice that among the other 4 categories of CRZ,the CRZ includes the water and the bed area between the LTL (LOW TIDE LINE) (which line is based on the lowest
G height of the water body during the spring tide) to the territorial water

[7] (1996) 5 SCC 281
[8] (1997) 2 SCC 87
[9] (2004) 3 SCC 445
[10] (2013) 8 SCC 760
[11] (2020) 3 SCC 18
H [12] (2019) 7 SCC 248

limit (12 nautical miles) in the case of the sea and the water bed and area between the LTL at the bank to the LTL on the opposite of the bank of the tidal influenced water bodies. CRZ has been classified under para 7 into CRZ I, CRZ II, CRZ III, CRZ IV and CRZ V. Since, we are concerned with CRZ II we may notice the elements which constitute the same.

> "7. Classification of the CRZ – For the purpose of conserving and protecting the coastal areas and marine waters, the CRZ area shall be classified as follows, namely:-
>
> XXXX XXXX XXXX
>
> (ii) CRZ-II,-
>
> The areas that have been developed upto or close to the shoreline.
>
> Explanation.- For the purposes of the expression "developed area" is referred to as that area within the existing municipal limits or in other existing legally designated urban areas which are substantially built-up and has been provided with drainage and approach roads and other infrastructural facilities, such as water supply and sewerage mains;"

22. Paragraph-3 provides for prohibited activities within CRZ. We may notice that it is divided into 14 categories and the noticeable feature is that certain exceptions to the prohibitions are also declared. Of relevance to the cases before us, are certain Clauses in paragraph-3. They are:

> "3. Prohibited activities within CRZ,- The following are declared as prohibited activitieswithin the CRZ,-
>
> (i) Setting up of new industries and expansion of existing industries except,-
>
> (a) those directly related to waterfront or directly needing foreshore facilities;
>
> Explanation: The expression "foreshore facilities" means those activities permissible underthis notification and they require waterfront for their operations such as ports and harbours, jetties, quays, wharves, erosion control measures, breakwaters, pipelines,

A lighthouses, navigational safety facilities, coastal police stations and the like.;"

23. Paragraph-3 (i) (b) permits projects of department of Atomic energy.Paragraph-3 (i) (d) permits projects of greenfield project already permitted at Navi Bombay. 3 (i) (e) allows construction, repair work of B dwelling units of local community including fishermen in accordance with Local Town and Country Planning Regulation.

24. Paragraph 3 (ii) deals with a prohibited category which reads as follows:

C "(ii) manufacture or handling oil storage or disposal of hazardous substance as specified in thenotification of Ministry of Environment and Forests, No. S.0.594 (E), dated the 28th July, 1989, S.0. No. 966(E), elated the 27th November, 1989 and GSR 1037 (E), dated the 5th December, 1989 except,-"

D 25. However, by way of exception to the prohibition 3 (ii) (a) permits transfer of hazardous substances from ships to ports terminals and refineries and vice versa. Clause 3 (ii) (a) reads as follows:

"(a) transfer of hazardous substances from ships to ports, terminals and refineries and viceversa;"

E 26. Paragraph-3 (viii), enacts the following prohibitions:

"(viii) Port and harbour projects in high eroding stretches of the coast, except those projects classified as strategic and defence related in terms of EIA notification, 2006 identified by MoEF based on scientific studies and in consultation with the State Government F or the Union territory Administration."

(Emphasis supplied)

27. Paragraph-3 (xi) provides for prohibition of construction activity in CRZ1 except those specified in para 8 of the notification. We need G not be detained with various others clauses. Regulation 4 deals with permissible activities in CRZ area. It is declared that activities which are enumerated under paragraph-4 shall be regulated except those prohibited in paragraph-3. This means what is prohibited in paragraph-3 cannot either be permitted or regulated within the meaning of paragraph-4. Paragraph-4 reads as follows:

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"4. Regulation of permissible activities in CRZ area.- The following activities shall beregulated except those prohibited in para 3 above,-

(i) (a) clearance shall be given for any activity within the CRZ only if it requires

waterfront and foreshore facilities;

(b) for those projects which are listed under this notification and also attract EIA notification,2006 (S.O.1533 (E), dated the 14th September, 2006), for such projects clearance under EIA notification only shall be required subject to being recommended by the concerned State or Union territory Coastal Zone Management Authority (hereinafter referred to as the CZMA).

(c) Housing schemes in CRZ as specified in paragraph 8 of this notification;

(d) Construction involving more than 20,000sq mts built-up area in CRZ-! 1 shall be considered inaccordance with EIA notification, 2006 and in case of projects less than 20,000sq mts built-uparea shall be approved by the concerned State or Union territory Planning authorities inaccordance with this notification after obtaining recommendations from the concerned CZMA and prior recommendations of the concern CZMA shall be essential for considering the grant of environmental clearance under EIA notification, 2006 or grant of approval by the relevant planning authority.

(e) MoEF may under a specific or general order specify projects which require prior public hearing of project affected people.

(f) construction and operation for ports and harbours, jetties, wharves, quays, slipways, shipconstruction yards, breakwaters, groynes, erosion control measures;

(ii) the following activities shall require clearance from MoEF, namely:-

(a) those activities not listed in the EIA notification, 2006.

(b) construction activities relating to projects of Department of Atomic Energy or Defence requirements for which foreshore facilities are essential such as, slipways, jetties, wharves,quays;

except for classified operational component of defence projects. Residential buildings,office buildings, hospital complexes, workshops of strategic and defence projects in terms ofEIA notification, 2006.;

(c) construction, operation of lighthouses;

(d) laying of pipelines, conveying systems, transmission line;

(e) exploration and extraction of oil and natural gas and all associated activities and facilities thereto;

(f) Foreshore requiring facilities for transport of raw materials, facilities for intake of cooling water and outfall for discharge of treated wastewater or cooling water from thermal powerplants. MoEF may specify for category of projects such as at (f), (g) and (h) of para 4;

(g) Mining of rare minerals as listed by the Department of Atomic Energy;

(h) Facilities for generating power by non-conventional energy resources, desalination plants and weather radars;

(i) Demolition and reconstruction of (a) buildings of archaeological and historical importance, (ii) heritage buildings; and buildings under public use which means buildings such as for thepurposes of worship, education, medical care and cultural activities;"

28. Since Clause 2 of paragraph-4 provides that the activities described thereunder would require clearance from MoEF, the question would arise as to whether for the other activities, which are permissible, does it require clearance? Paragraph-4.2 provides the answer.It provides for the procedure for clearance of permissible activities.Various formalities have to be undergone. Originally, the 2011 notification did not provide for any *ex post facto* approval. It is in the year 2018, i.e., on 09.03.2018 that paragraph-4.3 came to be inserted in the 2011 Notification. It read as follows:

"4.3 Post facto clearance for permissible activities.-

(i) all activities, which are otherwise permissible under the provisions of this notification, but have commenced construction without priorclearance, would be considered for regularisation only

in such cases wherein the project applied for regularization in the specified time and the projects which are in violation of CRZ norms would not be regularised;

(ii) the concerned Coastal Zone ManagementAuthority shall give specific recommendations regarding regularisation of such proposals and shall certify that there have been no violations of the CRZ regulations, while making such recommendations;

(iii) such cases where the construction have been commenced before the date of this notification without the requisite CRZ clearance, shall beconsidered only by Ministry of Environment, Forest and Climate Change, provided that the request for such regularisation is received inthe said Ministry by 30th June, 2018."

(Emphasis supplied)

29. It will at once be noticed that thereunder violation of 'norms' would disentitle a person to post facto clearance. The norms are laid down in Paragraph-8. Paragraph-8 provided for regulation of activities permissible under the 2011 Notification. It declares that the development or construction activities in different categories of CRZ shall be regulated by the concerned CZMA in accordance with the following norms. In CRZ-I, the norms were as follows:

"l. CRZ-1,-

(i) no new construction shall be permitted in CRZ-1 except,-

(a) projects relating to Department of Atomic Energy;

(b) pipelines, conveying systems including transmission lines;

(c) facilities that are essential for activities permissible under CRZ-l;

(d) installation of weather radar for monitoring of cyclones movement and prediction by Indian Meteorological Department;

(e) construction of trans harbour sea link and without affecting the tidal flow of water, between LTL and HTL.

(f) development of green field airport already approved at only Navi Mumbai;

A (ii) Areas between LTL and HTL which are not ecologically sensitive, necessary safety measures will be incorporated while permitting the following, namely:-

(a) exploration and extraction of natural gas;

B (b) construction of dispensaries, schools, public rainshelter, community toilets, bridges, roads, jetties, water supply, drainage, sewerage which are required fortraditional inhabitants living within the biosphere reserves after obtainingapproval from concerned CZMA.

C (c) necessary safety measure shall be incorporated while permitting such developmental activities in the area falling in the hazard zone;

(d) salt harvesting by solar evaporation of seawater;

(e) desalination plants;

D (f) storage of non-hazardous cargo such as edible oil, fertilizers and food grain withinnotified plants;

(g) construction of trans harbour sea links, roads on stilts or pillars without affecting thetidal flow of water."

E 30. In CRZ-II, the norms were as follows:

"II. CRZ-11,-

(i) buildings shall be permitted only on the landward side of the existing road, or on thelandward side of existing authorized

F structures;

(ii) buildings permitted on the landward side of the existing and proposed roads or existing authorized structures shall be subject to the existing local town and country planning regulations including the 'existing' norms of Floor Space Index or Floor

G Area Ratio:

Provided that no permission for construction of buildings shall be given on landward sideof any new roads which are constructed on the seaward side of an existing road:

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(iii) reconstruction of authorized building to be permitted subject with the existing Floor Space Index or Floor Area Ratio Norms and without change in present use;

(iv) facilities for receipt and storage of petroleum products and liquefied natural gas asspecified in Annexure-II appended to this notification and facilities for regasification of Liquefied Natural Gas subject to the conditions as mentioned in sub-paragraph (ii) of paragraph 3;

(v) desalination plants and associated facilities;

(vi) storage of non-hazardous cargo, such as edible oil, fertilizers and food grain innotified ports;

(vii) facilities for generating power by non-conventional power sources and associated facilities;"

31. CRZ-III, comprised of area up to 200 meters from HTL on the landward side in the case of sea front inter alia. It is marked as the NDZ [or No Development Zone}. It was,*inter alia*, provided that NDZ shall not apply "in such area falling within any notified port". There are various restrictions therein. Certain activities were shown as permitted activities in the NDZ. They included in Clause (e) facilities for receipt and storage of petroleum products and liquified gas as specified in Annexure-II. Interestingly, in regard to the area between 200 meters to 500 meters falling in CRZ-III, paragraph-8 permitted storage of non-hazardous cargo such as edible oil, fertilizers, foodgrains 'in' notified ports.

32. Having set out the relevant provisions of the 2011 notification, we may proceed to examine the contentions of the parties.

33. The appellants would contend that CRZ-I provides for the harshest regime having regard to the fact that the areas are ecologically sensitive and the geomorphological features play a role in the maintaining the integrity of the coast. They included mangroves.In case, the area of mangroves was more than 1000 sq.mts, a buffer of 50 mts. along the mangroves was to be provided. Sand dunes came under CRZ-I, as did corals and coral reefs and associated biodiversity.

34. It may be true that the appellant had secured permission of the local authority. Shri Ranjit Kumar may be correct in contending also

A that the laying of the pipeline ensured that additional vehicle load was not thrust on the Chennai port. There may be merit also in the contention of the appellants that the no objection certificate may indicate that the pipeline would lead to increased evacuation of edible oil through the pipeline, leading to increased port efficiency. As found by the NGT and not disputed by the fifth respondent also the power to grant post facto B approval flowed from paragraph-4.3 inserted in the 2011 Notification, though in the year 2018. The case of the appellant that the storage facility is located in CRZ II is beyond dispute. The storage facility being located on the landward side may be correct. The appellants assertion that between the storage facility and the Bay of Bengal there exists the C Ennore Express Highway appears to be correct. We proceed on the basis further that the distance between the entrance of the storage facility and the sea shore is '160 feet'.Laying of pipeline is permissible in CRZ I. Appellant's contention that there is no space at the Chennai port is sought to be buttressed with reference to certificate dated 24.08.2016. We may notice its contents:

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> "The cargo through put and number of vehicles moving in and out of Chennai Port has increased manifold over the past years. In order to reduce the road traffic and resultant congestion, the port has been encouraging alternate modes of cargo evacuation like Rail evacuation and evacuation through pipeline.
>
> E
>
> Accordingly Chennai Port has permitted M/s. KTV Health Food Private Limited to lay pipeline from BD2 berth where the firm is laying a 10 inch pipeline for evacuation of the cargo. This will result in increased evacuation of edible oil through pipeline thus avoiding inter carting using tanker lorries.
>
> F
>
> This will in turn result in better turnaround of the vessels thereby enabling the port to handle more and more volume of edible oil cargo and vessels thus increasing the port efficiency. This certificate is issued to enable the firm to obtain the required statutory clearances for laying the pipeline."

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35. It will be noticed that the Certificate is silent as regards the storage facility and it being in the port. The Certificate does not exactly declare that there is no space at the Chennai port. Appellants may be correct in contending that edible oil is not hazardous and that edible oil imports may be necessary to meet the requirement of a growing

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population. It may be true that there is no manufacturing process which may be involved in constructing or maintaining the storage facility.

36. The contention of the appellants that by decongesting the traffic and allowing the edible oil to be transferred through pipelines for onward transmission to the factories of the appellant, the baneful impact flowing from tanker lorry traffic by way of pollution is reduced, overlooks the true purport of the 2011 notification. We must demystify the object of the law as contained in the coastal regulation notification. As far as pollution is concerned, it is the subject matter of laws specifically relating to regulation and prohibition of activities on the said score. A perusal of the 2011 notification reveals the following as the avowed objects: (i) ensuring livelihood security to the fisher communities and other communities living in the coastal areas, (ii) conservation and protection of coastal stretches; (iii) the protection of the unique environment of the coastal stretches and its marine area; (iv) promotion or development through sustainable manner based on scientific principles taking into account the dangers of natural hazards in the coastalareas; (v) the aspect of sea level rise due to global warming. Therefore, we are unable to agree with the appellants that as the laying of the pipeline would result in greater efficiency in the functioning of the port or for that matter, it would reduce the traffic congestion, and what is more, thereby there would be a reduction in the pollution may not by itself be relevant or for concluding the issue. It is the duty of the Court to glean the true object of a law and give effect to it. It is equally the duty of the Court to eschew from its consideration matters which may not be strictly germane to the object. Hence, we proceed on the basis that the argument based on increased efficiency of the port and avoidance of traffic congestion, and the decreased pollution in the landward area, as it were, may not be by themselves relevant.

37. The next argument is the argument based on the difference between the words 'within' as found in CRZ-I as contrasted with the word 'in' in CRZ-II. We are called upon to employ a purposeful interpretation bearing in mind also the distinction in the words used. Much reliance has been placed on the judgment reported in *M. Nizamudeen (supra)*.The said matter arose under the coastal regulation notification issued in the year 1991.The MoEF granted permission to the respondent therein for construction for setting up of a marine terminal facility near the sea shore for receiving and transferring VCM which was one of the

raw materials for manufacturing PVC. Under the terms of the 1991 notification, certain activities were prohibited under paragraph-2. They included manufacturing or handling or storage or disposal of hazardous substances as provided therein except transfer of hazardous substances from ships to ports, terminals and refineries and *vice versa* 'in the port areas'.

38. The question fell for consideration as to the interpretation to be placed on the words 'in the port areas'. We feel advised to refer to the following portions of the judgment reported in *M. Nizamudeen* (supra):

> "36. It was contended by the Senior Counsel for the appellant-petitioner that transfer of VCM in CRZ area is completely prohibited and VCM cannot be carried through the CRZ except in the port area. Their argument is that VCM can be brought onshore by pipeline to the port area but not in the CRZ area. The arguments of learned Senior Counsel have put in issue the scope of expression, "except transfer of hazardous substances from ships to ports, terminals and refineries and vice versa in the port areas" which was added in Para 2(ii) on 9-7-1997. We are called upon to ascertain the true meaning and intention of the executive in bringing this exception.
>
> 37. In the original 1991 Notification there was no exception clause. It appears to have been added for the purpose of enabling transfer of hazardous substances from ships to ports, ships to terminals and ships to refineries and vice versa. Is such transfer of hazardous substances confined to terminals and refineries located in the port areas? The answer in the affirmative may make the said provision unworkable and would also result in absurdity inasmuch as the hazardous substance would be brought into the port, refinery or terminal in the port area from the ship and would remain there and could not be taken beyond the port area because of the prohibition. This surely could not have been the intention of the executive in adding the exception clause.
>
> 38. It is well settled that if exception has been added to remedy the mischief or defect, it should be so construed that it remedies the mischief and not in a manner which frustrates the very purpose. Purposive construction has often been employed to avoid a lacuna

and to suppress the mischief and advance the remedy. It is again a settled rule that if the language used is capable of bearing more than one construction and if construction is employed that results in absurdity or anomaly, such construction has to be rejected and preference should be given to such a construction that brings it into harmony with its purpose and avoids absurdity or anomaly as it may always be presumed that while employing a particular language in the provision absurdity or anomaly was never intended.

39. Notwithstanding imperfection of expression and that exception clause is not happily worded, we are of the view that by applying purposive construction, the expression, "in the port areas" should be read as "in or through the port areas". The exception in Para 2 (ii) then would achieve its objective and read, "except transfer of hazardous substances from ships to ports, ships to terminals and ships to refineries and vice versa, in or through the port areas". This construction will be harmonious with Para 3 (2) (ii) which permits the activity of laying pipelines in the CRZ area."

39. On the one hand, thelearned counsel for the appellants would place considerable reliance on the view taken by this Court. *Per contra*, Smt. Anitha Shenoy, learned Senior Counsel, would submit that the aforesaid decision turned on the facts obtaining therein and, in particular, the expression 'in the port areas', whereas the language used in paragraph-8 (II) (vi) and also the context should persuade this Court to place an interpretation advancing the object of a notification such as the 2011 Notification.

40. A perusal of paragraph-36 of the Judgment would show that the contention of the appellant therein was that the transfer of the raw material in the CRZ area was completely prohibited and it could not be carried through the zone except 'in the port area'. This Court understood the terms of the notification to be that it permitted transfer of the hazardous substances from the ships to the ports, ships to terminals and finally, ships to the refineries. The *vice versa* was also found to be within the contemplation of the notification as permitted activities. The Court posed the question whether the transfer was to be confined to refineries and terminals which were located in the port area. In other words, if the argument of the appellant therein was accepted, it could have resulted in confining the transfer of the raw material from the ship by pipeline to the port area but it could not be taken to a refinery located

A outside the port area.But the provision did contemplate transporting of the material from the ship to the refineries as also to terminals and vice versa. It was in this context that the Court proceeded to hold that a purposive construction was needed to avoid a situation of absurdity. Much turned on the presence of the words 'in the port area'. Therefore, keeping in mind the clear object of the Notification, which was self-evident, the
B Court added the words 'or through' to the words'in the port area'. This facilitated the transfer of the raw material from the ships to a refinery or a terminal which neednot have to be located in the port area. We must understand the decision of this Court in *M. Nizamudeen* (supra) in the aforesaid context. The rationale and principle appear inapposite to the
C cases before us.

41. Paragraph-8 (I) (f) relating to CRZ-I, may be recaptured:

"(8). Norms for regulation of activities permissible under this notification,-

D CRZ-I

(ii) Areas between LTL and IITL which are not ecologically sensitive, necessary safety measures will be incorporated while permitting the following, namely:-

E (f) storage of non-hazardous cargo such as edible oil, fertilizers and food grain within notified ports;"

42. We also do bear in mind that in paragraph-8 (I) (i) (b), construction of pipelines, inter alia,was permitted. It is thereafter that in paragraph-8 (II), under CRZ-II, Clause VI contemplated permitting of
F storage of non-hazardous cargo, such as edible oil, fertilizers and food grain 'in' notified ports. We may broaden our inquiry into the relevant contents of CRZ-III. CRZ-III of the 2011 Notification was divided into area 'A', which,*inter alia*, dealt with areas up to 200 meters from HTL on the landward side in the case of sea front. The said Clause proclaimed further that the said area would be a No Development Zone (NDZ). We
G notice that in CRZ-III the NDZ was not to be applicable in 'such areas' within any port limits.Thus, the expression 'within' made its appearance in relation to notified port limits again. In the permitted activities in the NDZ under area 'A',*viz.*, up to 200 meters as aforesaid, we find Clause (e), which permitted facilities for receipt and storage of petroleum products
H and liquified petroleum gas as specifiedin Annexure-II. Area B of CRZ-

III is described as the area comprised from 200 meters to 500 meters. Since the CRZ itself would terminate upon the 500 meters distance being obtained, this constituted, in other words, the residuary area, of CRZ-III. Under the same we notice that again facilities for receipt and storage of petroleum products and liquified natural gas as specified in Annexure-II was permitted. We may bear in mind that the very same activity had also been contemplated in area A of CRZ-III, *viz.*, the area comprised to 200 meters of the high tide line of the landward area in the case of the sea front, *inter alia*. Interestingly, when it comes to storage of non-hazardous cargo, such as edible oils fertilizers and food grain 'in' the notified ports, it was permitted activity in area 'B' of CRZ-III under Clause 4 thereof, that is, an area located between 200 metres to 500 metres.It must be noticed that CRZ-III had been classified inparagraph-7 essentially as relatively undisturbed area, which did not belong to either CRZ-I or II, which included the coastal zone in rural areas, both developed and undeveloped and also areas within municipal limits or in other legally designated urban areas, which were not substantially built up. We have already noticed the classification of CRZ-II earlier, as areas which had been developed up to or close to the shore line. Can it then be said that storage of non-hazardous cargo, such as edible oil, fertilizers food grain, permittedin the notified ports in CRZ-III, Area 'B', be also permitted in CRZ-III Area 'A'? Going by the contents of CRZ-III under activities which were permitted in the NDZ, we are unable to find any clause which permitted such storage of non-hazardous cargo including edible oil,*inter alia*.Therefore, in the NDZ area falling under area 'A' of CRZ-III, it may have been impermissible.

43. We have made this discussion only to remind ourselves that in interpretation of the Notification we are concerned with, a pursuitof a purposive interpretation or a search for arationale which the Court finds fair may meet with limitations which flow from the object of the maker of the notification being confined to the plain meaning of the words used. No doubt, a situation found in the facts of the case reported in *M. Nizamudeen* (supra) may call for a different approach.

44. Reverting back to the controversy, projected from the difference between the words 'within' and 'in', we may notice the following discussion of the NGT, which is a specialised Body, consisting of aJudicial Member and a Technical Member in a statutory appeal under the Act.

A "54. In compact Oxford English Dictionary, the meaning of the word 'in' is defined as follows:-

'in Preposition 1) so as to enclosed, surrounded, or inside. 2) expressing a period of time during which an event takes place. 3) expressing the length of time before an event is expected to
B *happen. 4) expressing a state, condition, or quality. 5) expressing inclusion or involvement. 6) indicating the means of expression used: put in writing. 7) indicating a person's occupation or profession. 8) expressing a value as a proportion of whole. Adverb 1) expressing movement that results in being inside or surrounded. 2) expressing the state*
C *of being enclosed or surrounded. 3) present at one's home or office. 4) expressing arrival at a destination. 5) [of the tide] rising or at its highest level. Adjective informal fashionable. - Phrases be in for be going to experience something, especially something unpleasant. in on knowing a secret. in*
D *that for the reason that. in with i11fo1mal enjoying friendly relations with. the ins and outs informal all the details. - Origin Old English"*

55. The word 'within' has been defined in the same Dictionary as follows:-

E "*within Preposition 1) inside. 2) inside the range or bounds of we were within sight of the finish. 3) occurring inside a particular period of time. 4) not further off than (used with distances). Adverb: 1) inside; indoors. 2)internally or inwardly."*

F 56. Meaning of these words when compared, it will be clear that what was intended by these words is something will have to be done within the area, if it relates to the area and in the area if relates to the area and not beyond that area."

G 45. Going by the definition of the word 'in', it includes 'so as to be enclosed, surrounded or inside'. One way of looking at the word 'in' the notified port in para 8 (II) (vi) would be that storage of non-hazardous material is permitted inside the notified port. We notice that the definition of the word 'within' also includes the word meaning inside. No doubt, Justice Oliver Wendell Holmes declared: "A word is not a crystal,
H transparent and unchanged; it is the skin of a living thought and may

vary greatly in color and content according to the circumstances and time in which it is used."

46. Smt. Anita Shenoy, learned Senior Counsel, would assert that what is 'out' cannot be considered as being 'in'. She expatiates by pointing out that the storage facility of the appellants is located a few kilometres away of the notified limits of the Chennai Port. She poses the question that on such facts could this Court be persuaded to still hold that it is inside the notified port, *viz.*, the Chennai Port. It would involve doing violence to the clear words. The word 'within' and 'in' therefore, in the context of the Notification must be given the same meaning.The Notification and the policy is not under a shadow, by way of a challenge to the Notification. It is the plain duty of the Court to give effect to the law as it is found. No doubt, as pointed out by Shri Dhruv Mehta, if it is found otherwise acceptable, an interpretation which accords with constitutional principles, may appeal to the Court, even if there is no challenge mounted.

47. A detour may be apposite. Chennai Port is a Port, which is, admittedly, a major port within the meaning of Major Ports Act, 1964. Another enactment, which deals with ports, is the Indian Ports Act, 1908. The appellants would contend that, while the storage facility may not be located within the Chennai Port, it is licenced under Section 57 of the Customs Act as a customs station. In the Major Ports Act, the word 'port' is defined in Section 2 (q). It reads as follows:

> "(q) "port" means any major port to which this Act applies within such limits as may, from time to time, be defined by the Central Government for the purposes of this Act by notification in the Official Gazette, and, until a notification is so issued, within such limits as may have been defined by the Central Government under the provisions of the Indian Ports Act."

48. Section 57 of the Customs Act, 1962 reads as follows: -

> "57. Licensing of public warehouses. —The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a public warehouse wherein dutiable goods may be deposited."

49. It is not the case of the appellants that the storage is located within the limits of the Chennai Port as contemplated in Section 2 (q). It

A is, therefore, not inside the said Port. However, it is appellants case that the storage facility is located in the Customs notified area. This is based on the license issued under Section 57 of the Customs Act. Under Section 15 of the Customs Act, the date for determination of the rate of duty and tariff valuation of any imported goods in the case of goods cleared from a warehouse, under Section 68, is declared to be the date, on which, a B bill for entry for home consumption, in respect of such goods, is presented under Section 15.Goods, which are imported may be cleared immediately with reference to their being entered for home consumption under Section 46, and the relevant date, would then be the date of presentation of the bill of entry. An importer may wish to warehouse the goods. It is in such C cases that it is only upon the bill for entry for home consumption is presented that the crucial date emerges. It is in this context that to regulate and control the collection of duty apart from other aspects that a license is procured under Section 57 of the Act. Section 2 sub-Section (11) of the Customs Act, defines the words'customs area'. It reads as follows:

D "2(11) "customs area" means the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities"

50. Section 2 sub-Section (12) defines 'customs port', E whereas,Section 2 sub-Section (13), defines 'customs station':

"(12) "customs port" means any port appointed under clause (a) of section 7 to be a customs port, and includes a place appointed under clause (aa) of that section to be an inland container depot"

F (13) "customs station" means any customs port, customs airport, international courier terminal, foreign post office or land customs station"

51. Section 7(a), to which reference may be necessary in view of the definition of the words 'customs port', reads as follows:

G "7. Appointment of customs ports, airports, etc.-(1) The Board may, by notification in the Official Gazette, appoint-

(a) The ports and airports which alone shall be customs ports or customs airports for the unloading of imported goods and the loading of export goods or any class of such goods;"

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52. Thus, every port falling under the Indian Port Act and the Major Port Act may not be on their own become a customs port. A customs port under Section 2(12) comes into being on a port being appointed as such under Section 7(a). A customs station no doubt, includes any customs port and a land customs station. The case of the appellant based on the license under Section 57 of the Customs Act may make it a customs area as it includes a warehouse but it is inconceivable as to how it would transform it into'in a notified port'.

53. An argument, which is raised by the learned Senior Counsel for the appellants is traceable to Clause (1) of paragraph-8 falling under CRZ-II. It reads as follows:

> "CRZ-11, -
>
> (i) buildings shall be permitted only on the landward side of the existing road, or on the landward side of existing authorized structures;"

It is the contention of the appellants that even if it is found that the storage facility cannot be treated as permitted in the port, as it does not fall in the port, both having regard to the fact that CRZ-II constitutes an area where the regime is less harsh than the one contemplated in CRZ-I and also bearing in mind that edible oil is non-hazardous cargo and still, what is more important, in CRZ-II, facilities for receipt and storage of petroleum products and liquified natural gas can be permitted, and lastly, as a storage facility would constitute a building, which, in the facts of this case, is located on the landward side of the existing road, the NGT was wrong. The argument appears to be that the Chennai metro development authority which is a local body has granted permission for the construction of the storage facility treating the area as a general industrial use zone. This means that the building was permissible under the Town planning law. The argument is further sought to be buttressed with reference to the definition of the word building which encompasses a storage facility.

54. This argument is sought to be met by Smt. Anita Shenoy, learned Senior Counsel, by pointing out that it would be plainly incongruous with the use of the words 'storage facilities' as contained in paragraph-8 (II) (vi), falling under permitted activities under CRZ-II with the word 'building', which must make the position clear that placed side-by-side,

A building cannot include the storage facility, which has been expressly articulated and permitted as long as it is 'in' a notified port.

55. We notice certain salient features. CRZ-II has been classified in para 7 as areas that have been developed up to or close to the shore line. The storage tank of the appellant in the first case appears to be
B located at a distance of 160 feet from the shore line. At the same time, it is located a few kilometres away from the Chennai port. We have already noticed that under CRZ III, the facility of storage of non-hazardous materials including edible oil is permitted only at a distance between 200-500 meters.This is even though both handling and storage
C of petroleum products is permitted, both within a distance of up to 200 meters from the high tide line as also between 200-500 meters from the high tide line. It may defy logic. At least at first blush. We have already set out the objects of the notification.They include guarding against the dangers of natural hazards in coastal areas and the sea level rise due to global warming. This is no doubt also to be balanced with the need for
D sustainable development. The coastal regulation appears to be based on considerations which appear to accommodate conflicting interests premised on considerations of what is felt as indispensably necessary and the nature of the zone in question. Allowing storage facilities for non-hazardous activities like edible oil, is, apparently, considered as an
E indispensable part of the operation of a port. The Port Authorities would have full control over the storage facility located within its limits. No doubt, Section 35 of the Major Port Trust Act, 1964, inter alia, empowers the port to execute works outside its limits for securing and storing goods to be landed or to be shipped. The storage tanks in question are not works executed by the port.

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56. As far as the case that is sought to be built up on the basis that since CRZ-II permitted buildings on the landward side of the existing road, we must notice that this is not the basis for the decision of the first respondent which was successfully impugned before the NGT. We, in fact, queried Smt. Archana Pathak Dave, learned counsel for the first
G respondent as to whether this was the basis.She did not appear to support the decision on the basis that it forms the basis for the decision. We may notice further, the following pleading of the first respondent which has been adverted to by the NGT in their reply affidavit before the NGT even:

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"5. It is submitted that the said activity under scrutiny is a permissible activity and regulated under para No. 8 (I) (i) (b), para No. 8 (I) (ii) (f) and para No. 8. II. (vi) of the CRZ Notification, 2011." A

57. Paragraph-8 (I) (i) (b), undoubtedly, related to permitting of pipelines being constructed in CRZ-I. Paragraph-8 (I) (ii) related to CRZ-I.The further reference is only to paragraph 8 (II) (vi) which permits the activity in question 'in' notified ports.The aspect relating to buildings being permitted on the landward side of the existing road dealt with in paragraph 8 (II) (i) was not the basis for the decision even according to the counter affidavit. This is apart from the fact that impugned decision of the first respondent does not proceed on the basis of paragraph 8 (II) (i). This is also apart from noticing the contention of Respondent No.5 that storage facility being specifically dealt with, 'building' under paragraph-8 (II) (i), would not include storage facility. We would therefore, think that we must not be persuaded to allow the appellants or allow them to lean on paragraph 8 (II) (i) of the 2011 Notification. B C D

58. Another argument, which has been raised by Shri Dhruv Mehta, appears to stem from the law relating to *contemporanea expositio*. The authorities are experts. They have applied their minds.Their understanding should govern. At least, it should be given the weight that is due to them. This forms the premise. Moreover, he refers to the judgment of this Court in *K. P. Varghese v. ITO*[13]. *K. P. Varghese* (supra) involved the interpretation of Section 52 (2) of the Income Tax Act, 1961. This Court took the view inter alia that to invoke Section 52(2), it was not enough only to show that the fair market value of the capital asset as on the date of the transfer exceeded the full value of the consideration declared by the assessee by not less than 15 per cent of the value so declared. This Court eschewed a purely literal interpretation on the basis that it led to manifestly unreasonable and absurd consequences. It was found that Parliament did not intend to target bona fide transactions, where the assessee had truthfully declared the actual consideration. This Court drew upon the speech of the Finance Minister, the Heydon's Rule or the Mischief Rule and the importance of the word 'declared' figuring in Section 52 (2) and the fact that soon after the introduction of the provision, the Central Board of Direct Taxes issued statutory circulars under Section 119 of the Income Tax Act explaining E F G

[13](1981) 4 SCC 173 H

A the scope of central. It was specifically held that the circulars would bind the Revenue even if they were not found to be in accordance with the correct interpretation of the provision. It is apart from all these that, no doubt, this Court went on to hold as follows: -

> "These two circulars of the Central Board of Direct Taxes are,
B as we shall presently point out, binding on the Tax Department in administering or executing the provision enacted in sub-section (2), but quite apart from their binding character, they are clearly in the nature of *contemporanea expositio* furnishing legitimate aid in the construction of sub-section (2). The rule of construction
C by reference to *contemporanea expositio* is a well-established rule for interpreting a statute by reference to the exposition it has received from contemporary authority, though it must give way where the language of the statute is plain and unambiguous. This rule has been succinctly and felicitously expressed in *Crawford on Statutory Construction*, (1940 Edn.) where it is stated in para
D 219 that"administrative construction (i.e. contemporaneous construction placed by administrative or executive officers charged with executing a statute) generally should be clearly wrong before it is overturned; such a construction, commonly referred to as practical construction, although non-controlling, is nevertheless entitled to considerable weight; it is highly persuasive".
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> The validity of this rule was also recognised in *Baleshwar Bagarti* v. *Bhagirathi Dass* [ILR 35 Cal. 701] where Mookerjee, J., stated the rule in these terms:
>
> "It is a well-settled principle of interpretation that courts in
F construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it."
>
> and this statement of the rule was quoted with approval by this Court in *Deshbandhu Gupta & Co.* v. *Delhi Stock Exchange*
G *Association Ltd.* [(1979) 4 SCC 565] It is clear from these two circulars that the Central Board of Direct Taxes, which is the highest authority entrusted with the execution of the provisions of the Act, understood sub-section (2) as limited to cases where the consideration for the transfer has been understated by the assessee and this must be regarded as a strong circumstance supporting
H the construction which we are placing on that sub-section."

59. The principle is inapposite in the facts. That the authorities have proceeded on a particular basis, may as well betray their erroneous understanding. That such views do not clinch the issue relating to the construction of the law is elementary. We would think that in the facts of this case and on a construction of the statute or the law in question,*viz.*, the 2011 notification, the understanding of the authorities if that be the basis of the contention, cannot overwhelm our understanding of the notification. We again reiterate that the words 'within' and 'in' cannot include what is outside the port. The maker of the notification has not even contemplated the activities in question in a 'port area'. We must here elucidate and observe that if the contention is to be upheld that a storage tank can be permitted outside the port limits, it will introduce chaos. The question would arise as to up to what distance from the port area it would be considered as the 'in the port area'.The 2011 Notification cannot receive an interpretation which would leave matters of moment to be afflicted with the vice of uncertainty. This is apart from the importance of avoiding an interpretation which seemingly allows free play in the joints to the Administrator but, at the same time, vest an arbitrary power in him.

60. As far as the pipeline is concerned, no doubt, it is permitted in CRZ I and arguments were addressed before us that even if the storage facility is to be demolished, making use of the edible oil brought through the pipelines, which are, no doubt, located underground, the oil could be collected at the spot from where it is currently located viz., where the pipeline ends and transported therefrom to the factory. There is no dispute that the pipeline is located in a zone where it is permitted activity. There can be no dispute that *ex post facto* permission can be given for permitted activity as found by the NGT itself. No doubt, the pipeline, may have meaning only as so far as it is connected to the storage tank. As to whether the pipeline can continue to be used if the storage tanks are demolished is a matter which must engage the attention of the authorities. We would think that in regard to the pipelines, it would be the District Coastal Zonal Management Authority,which could take a decision.

61. The upshot of the above discussion is as follows:

As regards the pipelines which have been drawn, the appellants may approach the relevant DistrictCoastal Zonal Management Authority within a period of one month from today.The District Coastal Zonal Management Authority will consider any application made in regard to

A the continued use of the pipeline and take a decision in accordance with law within a further period of six weeks from the date of the receipt of the application.

62. In view of the request made by the appellants that they may be permitted to continue to use the pipeline along with the storage facility B for a period of one year, we would think that theinterest of justice do require grant of some time.The appellants are accordingly given a period of six months from today to comply with the impugned order of the NGT. This is in regard to the direction to demolish the storage tanks. The appellant in the first appeal is given a month's time to pay the compensation ordered, if not already paid.

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63. As far as the direction to demolish the pipeline, the matter will await the decision to be taken by the District Coastal Zonal Management Authority.

64. The appeals are partly allowed. There will be no order as to D costs.

Divya Pandey Appeals partly allowed.
(Assisted by : Ms. Shevali Monga, LCRA)