M/S. Ispat Industries Ltd vs Commissioner Of Customs,Mumbai on 29 September, 2006

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Bench: Ashok Bhan, Markandey Katju

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           CASE NO.:
Appeal (civil)  3972 of 2001

PETITIONER:
M/s. Ispat Industries Ltd.

RESPONDENT:
Commissioner of Customs,Mumbai

DATE OF JUDGMENT: 29/09/2006

BENCH:
ASHOK BHAN & MARKANDEY KATJU

JUDGMENT:
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J U D G M E N T (With Civil Appeal Nos.5921-5924/2004,6160-6161/2004, 6366/2004 & 1603/2005) MARKANDEY KATJU, J.

Since common questions of law are involved in all these appeals we are deciding them in a common judgment and for our reference we are citing the facts of the case of Ispat Industries Ltd. (Civil Appeal No. 3972 of 2001).

CIVIL APPEAL NO. 3972 of 2001 This appeal has been filed against the judgment and order dated 7th March 2001 passed by the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as CEGAT), West Regional Bench, Mumbai.

Heard learned counsel for the parties and perused the record.

The facts of the case are that the appellant is a regular importer of iron ore pellets falling under Chapter Sub-heading No. 2601.12 of the Customs Tariff Act, 1975. The present appeal relates to 14 consignments of iron ore pellets imported between 14.2.1996 to 21.2.1998. In all these cases, the mother vessel coming from abroad and carrying the cargo anchored at Bombay Floating Light (in short 'BFL'). The cargo on board the mother vessel was then examined by the custom authorities

and provisionally assessed to duty. After payment of this duty, the out of charge order was passed on the Bills of Entry permitting clearing of such goods for home consumption. After obtaining the out of charge order, the cargo was discharged at BFL from the mother vessel to the barges which then ferried the cargo to the Dharamtar Jetty.

It may be mentioned that the cargo could not be discharged directly from the mother vessel to the Dharamtar Jetty due to lack of draft. Hence it was discharged from the mother ship on to the barges at BFL, which carried the goods to the Dharamtar Jetty. It may further be mentioned that while Dharamtar has been approved as a place for unloading under Section 8(a) of the Customs Act, BFL has not been so approved but is only a placing for anchoring the ship.

In the Bills of Entry filed by the appellant in respect of the imported cargo, the assessable value of the iron ore pellets was arrived at by including freight incurred on the imported cargo from the place of export to the port of discharge viz. Mumbai/JNPT/Dharamtar. However, by letter dated 7.2.1997 (Annexure P-2 to the Appeal), the Assistant Commissioner of Customs informed the appellant that as per Rule 9 of the Customs Valuation Rule, 1988, the freight incurred on barges and other associated charges in transportation of the goods from BFL to the Dharamtar jetty has also to be added for determining the correct assessable value for the purpose of calculating duty.

The appellant sent its reply on 19.5.1997 (Annexure P-3 to the Appeal) stating that the transportation charges of iron ore pellets by barges from BFL to Dharamtar jetty is not inclusive in the assessable value. The appellant alleged that the expression "place of importation" in Section 14 of the Customs Act read with Rule 9 referred to the BFL and not Dharamtar jetty because the goods in question passed out of customs control at BFL. The appellant further alleged that the risk and title to the goods changes the moment the cargo is discharged from the mother vessel on to the barges. Hence, it was alleged that the Dharamtar jetty cannot be considered as the 'place of importation', and the assessable value of the cargo should be determined without including the transportation charges of the barges from BFL to Dharamtar jetty.

Thereafter, a show cause notice dated 22.4.1998 was issued by the Assistant Commissioner of Customs (Preventive) Alibag Division (Annexure P-4 to the Appeal). In this show cause notice it was stated that duties which were assessed provisionally under Section 18 of the Customs Act, 1962 had been assessed finally and the appellant was requested to pay the duties short paid within 10 days or to explain why an amount of Rs. 78,54,112/- (the barge charges) should not be recovered from the appellant. Similar show cause notice dated 17.7.1998 (Annexure P-5 to the Appeal) was also issued.

Thereafter the appellant gave its reply and was also heard personally through its authorized representative, but by the order of the Assistant Commissioner of Customs dated 5.10.1998 (Annexure P-6 to the Appeal) the demand was confirmed. The appellant appealed against the said order which was rejected by the Commissioner of Customs (Appeals), Mumbai vide order dated 10.2.1999.

Aggrieved, the appellant filed an appeal to the Customs, Excise & Gold (Control) Tribunal which has been dismissed on 7.3.2001. Hence this appeal.

The short point before is as to whether the transportation charges for the use of barges for carrying the cargo from the mother vessel which anchored at BFL to the Dharmatar jetty where the goods were unloaded are to be added to calculate the assessable value for the purpose of duty under the Customs Act.

Before dealing with the contention of the parties, we may refer to the provisions of the Customs Act, 1962 which are relevant in this case.

Section 2(23) defines import to mean 'bringing into India from a place outside India'.

Section 2(25) defines 'imported goods' as follows:

> "imported goods" means any goods brought into India from outside India but does not include goods which have been cleared for home consumption"

Section 2(27) defines 'India' as follows:

> "India includes the territorial water of India".

Section 7(1)(a) of the Act states as follows:

> "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".

Section 8 of the Act states as follows :

> "Power to approve landing places and specify limits of customs area The Commissioner of Customs may -
>
> (a) approve proper places in any customs port or customs airport or coastal port for the unloading and loading of goods or for any class of goods;
>
> (b) specify the limits of any customs area".

Section 14. Valuation of goods for purposes of assessment:

> "(1) For the purposes of the Customs Tariff Act, 1975 or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of [international

trade, where

(a) the seller and the buyer have no interest in the business of each other; or

(b) one of them has no interest in the business of the other, and the price is the sole consideration for the sale or offer for sale]:

PROVIDED that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under Section 46, or a shipping bill or bill of export, as the case may be, is presented under Section 50;"

Section 14(1A) of the Act states as under:

" Subject to the provisions of sub-section (1), the price referred to in that sub-section in respect of imported goods shall be determined in accordance with the rules made in this behalf."

Section 30(1) states as under:

"(1) The person-in-charge of -

(i) a vessel; or

(ii) an aircraft; or

(iii) a vehicle, carrying imported goods or any other person as may be specified by the Central Government, by notification in the Official Gazette, in this behalf shall, in the case of a vessel or an aircraft, deliver to the proper officer an import manifest prior to the arrival of the vessel or the aircraft, as the case may be, and in the case of a vehicle, an import report within twelve hours after its arrival in the customs station, in the prescribed form and if the import manifest or the import report or any part thereof, is not delivered to the proper officer within the time specified in this sub-section and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-

charge or any other person referred to in this sub- section, who causes such delay, shall be liable to a penalty not exceeding fifty thousand rupees".

Section 31 (1) & (2) of the Act state as under:

" (1) The master of a vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel.

> (2) No order under sub-section (1) shall be given until an import manifest has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it".

Section 32 states as under:

> "No imported goods required to be mentioned under the regulations in an import manifest or import report shall, except with the permission of the proper officer, be unloaded at any customs station unless they are specified in such manifest or report for being unloaded at that customs station".

Section 33 states as under :

> "Except with the permission of the proper officer, no imported goods shall be unloaded, and no export goods shall be loaded, at any place other than a place approved under clause (a) of Section

8 for the unloading or loading of such goods".

Section 34 states as under :

> "Imported goods shall not be unloaded from, and export goods shall not be loaded on, any conveyance except under the supervision of the proper officer".

PROVIDED that the Board may, by notification in the Official Gazette, give general permission and the proper officer may in any particular case give special permission, for any goods or class of goods to be unloaded or loaded without the supervision of the proper officer".

Section 35 states as under :

> "No imported goods shall be water-borne for being landed from any vessel, and no export goods which are not accompanied by a shipping bill, shall be water-borne for being shipped, unless the goods are accompanied by a boat-note in the prescribed form:
>
> PROVIDED that the Board may, by notification in the Official Gazette, give general permission, and the proper officer may in any particular case give special permission, for any goods or any class of goods to be water-borne without being accompanied by a boat-note".

Section 46 (1) states as under :

> "The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting to the proper officer a bill of entry for home

consumption or warehousing in the prescribed form".

Section 47(1) states as under :

> "Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption".

Apart from the above-mentioned provisions in the Act, it is necessary to mention certain provisions in the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 (hereinafter referred to as 'The Rules').

Rule 4 (1) & (2) state as under:

> "(1) The transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 9 of these rules.
>
> (2) The transaction value of imported goods under sub-rule (1) above shall be accepted :
>
> Provided that --
>
> (a) the sale is in the ordinary course of trade under fully competitive conditions;
>
> (b) the sale does not involve any abnormal discount or reduction from the ordinary competitive price;
>
> (c) the sale does not involve special discounts limited to exclusive agents;
>
> (d) objective and quantifiable data exist with regard to the adjustments required to be made, under the provisions of rule 9, to the transaction value;
>
> (e) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -
>
> (i) are imposed or required by law or by the public authorities in India; or
>
> (ii) limit the geographical area in which the goods may be resold; or
>
> (iii) do not substantially affect the value of the goods;

(f) the sale or price is not subject to same condition or consideration for which a value cannot be determined in respect of the goods being valued;

(g) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Rule 9 of these rules; and

(h) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below".

Rule 5(1) states as under :

"(1)(a) Subject to the provisions of Rule 3 of these rules, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1) of this rule, is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value".

Rule 6(1) states as under:

"(1) Subject to the provisions of Rule 3 of these rules, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued".

Rule 9(2) states as under:

"(2) For the purpose of sub-section (1) and sub-

section (1A) of Section 14 pf the customs Act, 1962(52 of 1962) and these rules, the value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include --

(a) the cost of transport of the imported goods to the place of importation;

(b) loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation;

and

(c) the cost of insurance:

Provided that --

(i) where the cost of transport referred to in clause (a) is not ascertainable, such cost shall be twenty per cent of the free on board value of the goods;

(ii) the charges referred to in clause

(b) shall be one per cent of the free on board value of the goods plus the cost of transport referred to in clause (a) plus the cost of insurance referred to in clause (c);

(iii) where the cost referred to in clause (c) is not ascertainable, such cost shall be 1.125% of free on board value of the goods;

Provided further that in the case of goods imported by air, where the cost referred to in clause (a) is ascertainable, such cost shall not exceed twenty per cent of free on board value of the goods:

Provided also that where the free on board value is not ascertainable, the costs referred to in clause (a) shall be twenty per cent of the free on board value of the goods plus cost of insurance for clause (i) above and the cost referred to in clause

(c) shall be 1.125% of the free on board value of the goods plus cost of transport for clause (iii) above.

Provided also that in case of goods imported by sea stuffed in a contained for clearance at an Inland Container Depot or Contained Freight Station, the cost of freight incurred in the movement of contained from the port of entry to the Inland Container Deport or Container freight Station shall not be included in the cost of transport referred to in clause (a).

Rule 9 (4) states as under:

"No addition shall be made to the price actually paid or payable in determining the value of the imported goods except as provided for in this rule".

From a perusal of the above provisions (quoted above), it is evident that the most important provision for the purpose of valuation of the goods for the purpose of assessment is Section 14 of the

Customs Act, 1962. Section 14(1), has already been quoted above, and a perusal of the same shows that the value to be determined is a deemed value and not necessarily the actual value of the goods. Thus, Section 14(1) creates a legal fiction. Section 14(1) states that the value of the imported goods shall be the deemed price at which such or like goods are ordinarily sold or offered for sale, for delivery at the time and place of importation in the course of international trade. The word "ordinarily" in Section 14(1) is of great importance. In Section 14(1) we are not to see the actual value of the goods, but the value at which such goods or like goods are ordinarily sold or offered for sale for delivery at the time of import. Similarly, the words "in the course of international trade" are also of great importance. We have to see the value of the goods not for each specific transaction, but the ordinary value which it would have in the course of international trade at the time of its import.

The view we are taking in this case is in accordance with the three-Judge Bench decision of this Court in M/s. Rajkumar Knitting Mills (P) Ltd. vs. Collector of Customs, Bombay AIR 1998 SC, 2602. In para 7 of the said decision, it was observed thus:

> "The words "ordinarily sold or offered for sale"

do not refer to the contract between the supplier and the importer, but to the prevailing price in the market on the date of importation or exportation"

> The above decision thus clearly held that it is not the actual price mentioned in the contract between the supplier and the importer which has to be seen, but the prevailing price in the market has to be seen. This again lends support to the view we are taking that Section 14 is a deeming provision and we have not to take specific cases for determining the value of the imported goods unless the same is in accordance with Section 14 of the Act.
>
> Hence, while determining the value of Section 14, we must never lose sight of the fact that Section 14(1) is a deeming provision which creates a legal fiction.
>
> Legal fictions are well-known in law. In the oft-quoted passage of Lord Asquith in East End Dwelling Co. Ltd. vs. Finsbury Borough Council (1951) 2 All ER 587, it was observed :
>
> "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it -. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs".

The observation has been referred to in a large number of Supreme Court decisions which have been mentioned in G.P. Singh's `Principles of Statutory Interpretation', Ninth Edition (2004) at pp.

327-338, which may be seen.

In Commissioner of Income Tax, Bombay vs. Bombay Corporation, AIR 1930 PC 54, Lord Dunedin observed thus:

> "Now when a person is 'deemed to be' something the only meaning possible is that whereas he is not in reality that something the Act of Parliament requires him to be treated as if he were".

Learned counsel for the respondent, no doubt, emphasized on Rule 9 of the Rules (quoted above), but it must be realized that Rule 9 cannot be given an interpretation which is in violation of Section 14 of the Act. After all, the rules are subservient to the Act and cannot deviate from the provisions of the parent Act.

Learned counsel for the Revenue emphasized on Rule 9(2)(a) of the Rules in support of his contention that barging charges have also to be included in the value of the imported goods as they are also transportation charges.

On first impression the submission of learned counsel for the Revenue appears to be sound, because surely the transportation by barge is also part of the transportation of the goods. However, on a deeper analysis, we are of the opinion that the submission of the learned counsel of the Revenue is clearly untenable. Admittedly, all the contracts entered into with the foreign sellers are either CIF contracts or FOB contracts with Bills of Lading nominating Bombay/JNPT/Dharamtar as the ports of discharge. As such the cost of transport has already been included in the price paid to the seller under the CIF contract or an ascertainable freight determined and paid by the buyer from the foreign port to the Indian port. Hence, a further addition to the transport charges under Rule 9(2)(a) of the Customs Valuation Rules, 1988 is in our opinion clearly impermissible.

If we read Rule 9(2) of the Rules independently without considering it along with Section 14 of the Act, then of course the submission of the learned counsel for the Revenue could be sustained. However, in our opinion, Rule 9(2) has to be read along with Section 14 and it cannot be read independently. As already stated above, Section 14 creates a legal fiction and we have to see the ordinary value of the imported goods in the course of international trade at the place and time of import. This means that specific cases of import should be ignored. In fact, it is for this reason that Rules 4, 5 and 6 of the Rules have been promulgated. The actual price paid for the goods can only be taken into consideration provided the sale is in the ordinary course of trade under fully competitive conditions and the other provisions of Rule 4 are satisfied.

It is well-known that there are sales in which there is under- invoicing or over-invoicing or for some other reasons the sale is not under full competitive conditions. In such a case, Rules 5 & 6 have to be resorted to and the actual price has not to be seen. Thus, the Rules have been created to serve the object of Section 14 which was to determine a deeming price and not the actual price of the imported goods.

In our opinion if there are two possible interpretations of a rule, one which subserves the object of a provision in the parent statute and the other which does not, we have to adopt the former, because adopting the latter will make the rule ultra vires the Act.

In this connection, it may be mentioned that according to the theory of the eminent positivist jurist Kelsen (The Pure Theory of Law)in every legal system there is a hierarchy of laws, and whenever there is conflict between a norm in a higher layer in this hierarchy and a norm in a lower layer the norm in the higher layer will prevail (see Kelsen's `The General Theory of Law and State').

In our country this hierarchy is as follows :

1) The Constitution of India;

2) The Statutory Law, which may be either Parliamentary Law or Law made by the State Legislature;

3) Delegated or subordinate legislation, which may be in the form of rules made under the Act, regulations made under the Act, etc.;

4) Administrative orders or executive instructions without any statutory backing.

The Customs Act falls in the second layer in this hierarchy whereas the rules made under the Act fall in the third layer. Hence, if there is any conflict between the provisions of the Act and the provisions of the Rules, the former will prevail. However, every effort should be made to give an interpretation to the Rules to uphold its validity. This can only be possible if the rules can be interpreted in a manner as to be in conformity with the provisions in the Act, which can be done by giving it an interpretation which may be different from the interpretation which the rule could have if it was construed independently of the provisions in the Act. In other words, to uphold the validity of the rule sometimes a strained meaning can be given to it, which may depart from the ordinary meaning, if that is necessary to make the rule in conformity with the provisions of the Act. This is because it is a well settled principle of interpretation that if there two interpretations possible of a rule, one of which would uphold its validity while the other which would invalidate it, the former should be preferred.

In this connection we may also refer to the Gunapradhan Axiom of the Mimansa Principles of Interpretation, which is our indigenous system of interpretation (see K.L. Sarkar's `Mimansa Rules of Interpretation, Second Edition p.71).

It is deeply regrettable that in our Courts of Law, lawyers quote Maxwell and Craies but nobody refers to the Mimansa Principles of Interpretation. Few people in our country are aware about the great intellectual achievements of our ancestors and the intellectual treasury they have bequeathed us. The Mimansa Principles of Interpretation is part of that intellectual treasury, but it is distressing to note that apart from a reference to these principles in the judgment of Sir John Edge, the then Chief Justice of Allahabad High Court, in Beni Prasad v. Hardai Devi, (1892) ILR 14 All 67 (FB), and

in the judgments of one of us (Markandey Katju, J.) while a Judge of Allahabad High Court (which have been annexed to the Second Edition of K.L. Sankar's book), there has been almost no utilization of these principles even in our own country.

It may be mentioned that the Mimansa Rules of Interpretation were our traditional principles of interpretation laid down by Jaimini in the 5th Century B.C. whose Sutras were explained by Shabar, Kumarila Bhatta, Prabhakar, etc. The Mimansa Rules of Interpretation were used in our country for at least 2500 years, whereas Maxwell's First Edition was published only in 1875. These Mimansa Principles are very rational and logical and they were regularly used by our great jurists like Vijnaneshwara (author of Mitakshara), Jimutvahana (author of Dayabhaga), Nanda Pandit, etc. whenever they found any conflict between the various Smritis or any ambiguity or incongruity therein. There is no reason why we cannot use these principles on appropriate occasions even today. However, it is a matter of deep regret that these principles have rarely been used in our law Courts. It is nowhere mentioned in our Constitution or any other law that only Maxwell's Principles of Interpretation can be used by the Court. We can use any system of interpretation which helps us solve a difficulty. In certain situations Maxwell's principles would be more appropriate, while in other situations the Mimansa principles may be more suitable. One of the Mimansa principles is the Gunapradhan Axiom, and since we are utilizing it in this judgment we may describe it in some detail. 'Guna' means subordinate or accessory, while 'Pradhan' means principal. The Gunapradhan Axiom states :

> "If a word or sentence purporting to express a subordinate idea clashes with the principal idea, the former must be adjusted to the latter or must be disregarded altogether".

This principle is also expressed by the popular maxim known as 'matsya nyaya', i.e. 'the bigger fish eats the smaller fish'. According to Jaimini, acts are of two kinds, principal and subordinate. In Sutra 3 : 3 : 9 Jaimini states :

> "Guna mukhya vyatikramey tadarthatvan mukhyen vedasanyogah"

Kumarila Bhatta, in his Tantravartika (See Ganganath Jha's English Translation Vol. 3, p. 1141) explains this Sutra as follows:

> "When the Primary and the Accessory belong to two different Vedas, the Vedic characteristic of the Accessory is determined by the Primary, as the Accessory is subservient to the purpose of the primary."

It is necessary to explain this Sutra in some detail. The peculiar quality of the Rigveda and Samaveda is that the mantras belonging to them are read aloud, whereas the mantras in the Yajurveda are read in a low voice. Now the difficulty arose about certain ceremonies, e.g. Agnyadhana, which belong to the Yajurveda but in which verses of the Samaveda are to be recited. Are these Samaveda verses to be recited in a low voice or loud voice ? The answer, as given in the above Sutra, is that they are to be recited in low voice, for although they are Samaveda verses, yet

since they are being recited in a Yajurveda ceremony their attribute must be altered to make it in accordance with the Yajurveda.

In the Shabar Bhashya translated into English by Dr. Ganga Nath Jha, published in the Gaekwad Oriental Series, the Sutra is read as follows :

> "Where there is a conflict between the use and the substance greater regard should be paid to the use"

Commenting on Jaimini 3 : 3 : 9 Kumarila Bhatta says :

> "The Siddhanta laid down by this Sutra is that in a case where there is one qualification pertaining to the Accessory by itself and another pertaining to it through the Primary, the former qualification is always to be taken as set aside by the latter. This is because the proper fulfillment of the Primary is the business of the Accessory also as the latter operates solely for the sake of the former. Consequently if, in consideration of its own qualification it were to deprive the Primary of its natural accomplishment then there would be a disruption of that action (the Primary) for the sake of which it was meant to operate. Though in such a case the proper fulfillment of the Primary with all its accompaniments would mean the deprival of the Accessory of its own natural accompaniment, yet, as the fact of the Accessory being equipped with all its accompaniments is not so very necessary (as that of the primary), there would be nothing incongruous in the said deprival".(See Ganganath Jha's English translation of the Tantravartika, vol. 3 p. 1141).
>
> The Gunapradhan Axiom can also be deducted from Jaimini 6 : 3 : 9 which states :
>
> "When there is a conflict between the purpose and the material, the purpose is to prevail, because in the absence of the prescribed material a substitute can be used, for the material is subordinate to the purpose".

To give an example, the prescribed Yupa (sacrificial post for tying the sacrificial animal) must be made of Khadir wood. However, Khadir wood is weak while the animal tied may be restive. Hence, the Yupa can be made of Kadar wood which is strong. Now this substitution is being made despite the fact that the prescribed wood is Khadir, but this prescription is only subordinate or Accessory to the performance of the ceremony, which is the main object. Hence if it comes in the way of the ceremony being performed, it can be modified or substituted".

In our opinion, the Gunapradhan principle is fully applicable to the interpretation of Rule 9(2). Rule 9(2) is subservient to Section 14. We must, therefore, interpret it in such a way as to make it in accordance with the main object that is contained in Section 14 of the Customs Act. It may be that in isolation Rule 9(2) conveys some other meaning, but when it is read along with Section 14 of the Act, it must be given a meaning which is in accordance with the object of Section 14. The object of Section 14 is 'primary' whereas the conditions in Rule 9(2) are the 'accessories'. The 'accessory'

must, therefore, serve the 'primary'.

In our opinion, it is really not necessary to decide whether the place of importation is the jetty or the BFL. Whether the place of import is deemed to be the BFL or Dharamtar jetty it would make no difference to the conclusion we have arrived at because the cost of transportation of the imported goods has already been included for delivery at the Dharamtar jetty and has already been paid to the seller in the CIF or FOB contract. Hence, a further addition to the transport charges in the form of barge charges for the transportation by barges cannot be said to be contemplated by Section 14 of the Act.

Learned counsel for the Revenue has relied upon a decision of this Court in Garden Silk Mills Ltd. vs. Union of India 1999 9113) ELT 358(SC), in which it was observed thus:

> "It was further submitted that in the case of Apar's Private Limited this Court was concerned with Sections 14 and 15 but here we have to construe the word "imported" occurring in Section 12 and this can only mean that the moment goods have entered the territorial water, the import is complete. We do not agree with the submission. This Court in its opinion in Re. The Bill to Amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excises and Salt Act, 1944, 1964(3) SCR 787 at page 823 observed as follows:
>
> "Truly speaking, the imposition of an import duty, by and large, results in a condition which must be fulfilled before the goods can be brought inside the customs barriers i.e. before they form part of the mass of goods within the country."

It would appear to us that the import of goods into India would commence when the same cross into the territorial waters but continues and is completed when the goods become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the customs barriers and the bill of entry for home consumption is filed".

On the strength of the above observation in the Garden Silk case (supra), learned counsel has submitted that the place of importation is not where the ship is anchored (BFL), but the jetty which has been approved for unloading of the goods under Section 8 of the Act. Hence, he submitted that the transportation charges for carrying goods from the mother ship by barges to the jetty has also to be included in the valuation of the goods for imposing duty. In our opinion, the decision of this Court in Garden Silk (supra) is clearly distinguishable.

It may be noted that Garden Silk (supra) was a case where the question was whether landing charges could be included in the value of the imported goods for the purpose of valuation of the goods for imposing custom duty. That was not a case relating to transportation charges nor was it a case relating to charges for transportation of goods from the mother ship on a barge to the place (jetty) approved under Section 8(a) of the Act. For the same reason the decision of this Court in Coromandal Fertilizer Ltd. vs. Collector of Customs 2000(1) SCC 448, also is not relevant because that decision also is a case relating to landing charges and has nothing to do with the question as to

whether transportation charges for transporting the goods from the mother ship by barge to the place approved under Section 8(a) has to be added for the purpose of valuation of the goods for imposing custom duty.

Similarly, the decision in Union of India vs. Apar Industries Limited 1999 (5) JT 160 is also not relevant. In that case the facts were that the day when the goods entered the territorial waters, the rate of duty was nil but when they were removed from the warehouse, the duty had become leviable. In this context, this Court held that what is material is not the date when the goods entered the territorial waters of India but the date mentioned in Section 15 of the Act. Thus, Apar Industries case (supra) has also nothing to do with the question which we were dealing with in the present case.

In Dhiraj Lal H. Vohra & others vs. Union of India & others 1993 (Supp.3) SCC 453, the facts were that the appellants' ship arrived on February 20, 1989 at Madras port and was ready to discharge the cargo. It delivered the import manifest under No. 116 on the said date but due to continued strike the cargo could not be handled. On February 27, 1989 the petitioner presented the bill of entry "for clearance of goods for home consumption" and it was entered at No. 012036 which was received in the appraising section of the group on February 28, 1989. The ship arrived into the port and was berthed on March 2, 1989. The entry inward was granted on March 2, 1989. From March 1, 1989 the rate of excise duty was altered. It was increased to 150 per cent ad valorem plus Rs. 300 per piece for certain sizes and for other sizes duty was raised to 150 per cent ad valorem plus weight-based duty. The result was that pre-tariff duty was Rs. 15,73,611.05 while as per the new tariff levy effective from March 1, 1989 the difference came to Rs. 1,80, 46,092.64.

On these facts, the Supreme Court observed thus:

> "The contention, therefore, that the ship entered Indian territorial waters on February 20, 1989 and was ready to discharge the cargo is not relevant for the purpose of Section 15(1) read with Sections 46 and 31 of the Act. The prior entries regarding presentation of the bill of entry for clearance of the goods on February 27, 1989 and their receipt in the appraising section on February 28, 1989 also are irrelevant. The relevant date to fix the rate of customs duty, therefore, is March 2, 1989. The rate which prevailed as on that date would be the duty to which the goods imported are liable to the impost and the goods would be cleared on its payment in accordance with the rate of levy of customs prevailing as on March 2, 1989".

A careful perusal of the decision in Dhiraj Lal's case (supra) again shows that this decision is not relevant for deciding the present case as it was not a case where the goods were discharged from the mother ship on to barges from where they were taken to the places approved under Section 8(a) of the Act.

In Kiran Spinning Mills vs. Collector of Customs AIR 2000 SC 3448, this Court observed :

> "That apart, this Court has held in Sea Customs Act, (1964) 3 SCR 787 at page 803: (AIR 1963 SC 1760) that in the case of duty of customs the taxable event is the import

> of goods within the customs barriers. In other words, the taxable event occurs when the customs barrier is crossed. In the case of goods which are in the warehouse the customs barriers would be crossed when they are sought to be taken out of the customs and brought to the mass of goods in the country".

A perusal of the facts of the above case reveals that it was not a case in which the question whether the transportation charges for carrying the goods from the mother ship by barges to the place approved under Section 8(a) was to be added was involved. Hence this decision is also distinguishable.

Learned counsel for the Revenue relied upon a Constitution Bench judgment in M/s. Bharat Surfactants (Pvt) Ltd. and another vs. Union of India and another AIR 1989 SC 2054, in para 14 of which it was observed :

> "We do not find it possible to accept this submission. The provisions of S.15 are clear in themselves. The date on which a Bill of Entry is presented under S. 46 is, in the case of goods entered for home consumption, the date relevant for determining the rate of duty and tariff valuation. Where the Bill of Entry is presented before the date of Entry Inwards of the vessel, the Bill of Entry is deemed to have been presented on the date of such Entry Inwards".

In our opinion, this case has no relevance in the present case. The facts there were that although the ship in question entered Bombay port and registered itself there but was unable to secure a berth in the port of Bombay at that time. Hence the vessel under pressing circumstances left for Karachi port for unloading other cargo intended for that port. On return to Bombay port, it was asked to pay a higher rate of duty which had been increased in the meantime. It was in that connection that the aforesaid observation was made by the Constitution Bench. Clearly, this decision has nothing to do with the present case, because it was not concerned with transportation charges by a barge.

Thus, it appears that most of the decisions cited by learned counsel for both the parties in this case are not very relevant for deciding the controversy in issue here.

It must be remembered in this context that a case is only an authority for what it actually decides. As observed by the Supreme Court in State of Orissa vs. Sudhansu Sekhar Misra AIR 1968 SC 647 (vide para 13) :

> "A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury, LC said in Quinn vs. Leathem 1901 AC 495:
>
> "Now before discussing the case of Allen vs. Flood (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read

> as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all".

In Ambica Quarry Works vs. State of Gujarat & others 1987 (1) SCC 213, this Court observed :

> "The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it".

In Bhavnagar University vs. Palitana Sugar Mills Pvt. Ltd 2003(2) SCC 111, this Court observed :

> "It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision".

In Bharat Petroleum Corporation Ltd. & another vs. N.R. Vairamani & another AIR 2004 SC 4778, it was held that a decision cannot be relied on without disclosing the factual situation. In the same judgment this Court held as under:

> "Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgment of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgment. They interpret words of statutes; their words are not to be interpreted as statutes".

In London Graving Dock Co. Ltd. vs. Horton 1951 AC 737 at p. 761, Lord Mac Dermot observed:

> "The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge".

In Home Office vs. Dorset Yacht Co. 1970(2) All ER 294 Lord Reid said, "Lord Atkin's speech is not to be treated as if it was a statute definition. It will require qualification in new circumstances."

Megarry, J in (1971) 1WLR 1062 observed:

> "One must not, of course, construe even a reserved judgment of Russell L. J as if it were an Act of Parliament". And in Herrington vs. British Railways Boards (1972) 2 WLR 537, Lord Morris said:
>
> "There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in setting of the facts of a particular case".

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

> "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.
>
> "Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in tickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it".

Hence, the decisions of the Court cited by the appellant's counsel are confined to their own facts and can have no application to the present case.

In the present case, the vessel had been anchored and permission by the proper officer under Section 47 after examination of the cargo had been granted after due payment, and goods were allowed to be water-borne through a Boat Note under Section 35.

The goods were unloaded from the mother ship on to the barge at BFL which, do doubt, had not been approved as the landing place under Section 8 of the Act. However, Section 33 permits unloading at a place other than that approved under Section 8 with the permission of the proper officer, and there is no doubt that permission had been obtained under Section 33 under the supervision of the proper officer under Section 34, and the goods were accompanied by a Boat Note under Section 35 of the Customs Act. Hence, unloading of the goods from the mother ship at the BFL was valid, since it was done in accordance with Sections 33 and 34 of the Customs Act. No doubt, the BFL had not been approved as proper place under Section 8(a), but it was a place where the mother ship could anchor. Hence, in our opinion, there is no illegality.

In the impugned order dated 7.3.2001 the Tribunal has based its decision on its conclusion that the place of import was the Dharamtar Jetty and not the BFL (vide paragraphs 9 to 18 of The Tribunal's order). Without commenting on the correctness or otherwise of this view, we are of the opinion that whether we treat the place of import as BFL or the Dharamtar jetty it will make no difference to the conclusion we have reached viz. that charges for transport of the goods by barges from BFL to Dharamtar jetty cannot be included in the valuation of the goods.

It is not disputed that the freight upto the Dharamtar jetty had been paid by the buyer. Hence we cannot agree that additional transportation charges being the charges for carrying the goods by barges from the mother ship to the Dharamtar Jetty have to be added to the valuation. The fact that the mother ship could not come upto the Dharamtar Jetty is an extraordinary situation (due to lack of draft) and hence any extra transportation charge to meet this situation cannot, in our opinion, be added to the value of the goods.

The bills of lading show that the port of discharge was Mumbai Port/JNPT/Dharamtar. In the bill of entry, the FOB price, freight and insurance were shown separately in U.S. dollars. Since Dharamtar was also shown as the port of discharge, the freight charges paid by the buyer to the shippers included the charges for freight not only upto BFL but also to Dharamtar.

The view we are taking is in accordance with the view expressed in Halsbury's Laws of England, Fourth Edition Vol.43(2) : Shipping and Navigation para 1707 where it is stated :

> "1707. Proceeding `so near to port of discharge as ship can safely get'. In practice, the contract usually provides that the ship is to proceed to the port of discharge or so near to it as she can safely get. This provision is intended to benefit the ship owner, and its effect is to substitute another destination to which the ship may proceed. By proceeding to this other destination and delivering the cargo there, the ship owner equally completes the voyage in accordance with the terms of the contract, and is thus entitled to be paid the full freight."

For the reasons given above, this appeal is allowed and the impugned order of the Tribunal as well as of the Customs authorities are set aside, and it is held that the charges for transportation of the goods by barges from the mother ship at BFL to the Dharamtar Jetty cannot be added to the valuation of the imported goods for the purpose of levying customs duty.

Any amount collected by the revenue as duty on barge charges shall be refunded forthwith to the assessee with statutory interest from the date of payment to the date of refund, which must be within three months from today. No costs.

Civil Appeal Nos. 6366/2004, 1603/2005, 6160-6161/2004 & 5921-5924/2004 In view of the decision in Civil Appeal No. 3972 of 2001, Civil Appeal Nos. 6366/2004 and 1603/2005 are allowed and Civil Appeal Nos. 6160-6161/2004 and 5921-5924/2004 filed by the Revenue are dismissed. No costs.