

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.65 of 2018
WITH
MISC. CIVIL APPLN. NOS.971, 1023 & 1052 OF 2018

- 1 M/s FOMENTO RESOURCES
PRIVATE LIMITED
Having Office at 325,
Second Floor, Casa Del Sol,
Casa III, Next to Goa Marriot,
Miramar, Goa 403 001
Through its Director
Mr. Ambar Timblo
- 2 MR. AMBAR TIMBLO,
Son of Mr. Auduth Timblo,
Age 42 years, resident of
F1, F2 Dona Paula Apartment,
Near Ocean Height, Dona Paula,
Goa, Shareholder of the
Petitioner No.1 above named
- Petitioners
- versus
- 1 Union of India
Through its Secretary (Finance)
Government of India, having
Office at Shastri Bhavan
New Delhi
- 2 Directorate of Revenue Intelligence
Mumbai Zonal Unit,
13, Vithaldas Thackersey Marg
Opp. Patkar Hall, New Marine Line,
Mumbai 400 020
- 3 Directorate of Revenue Intelligence,
Goa Regional Unit, Flat No.F3/F4
Bldg. No.A1, Caculo Enclave
Opp. Fire Service Station, St. Inez,
Panji, Goa 403 001.
- 4 Commissioner of Customs
Having office at
Custom House,
Mormugao, Goa
- 5 Dileep Babu Naik,
Asst. Commissioner (Group AC),
Major of age, Indian National,
Having office at Custom House,
Mormugao, Goa

- 6 Arun Kumar,
Assessing Officer/Appraiser
Major of age, Indian National
Having office at Custom House,
Mormugao, Goa
- 7 Sudhir Kumar Nair,
Shed Officer/Appraiser,
Major of age, Indian National,
Having office at Custom House,
Mormugao, Goa
- 8 Shashi Bhushan,
Inspector (Examiner)
Major of age, Indian National,
Having office at Custom House,
Mormugao, Goa

Respondents.

Advocates

Mr. S.S. Kantak, Senior Advocate with Mr. Parag S. Rao, Ms. Swati S. Kamat & Ms. Aleesha Reis Falcao, Advocates for the petitioners,
Ms. Asha A. Desai, Senior Standing Counsel for respondent Nos.1 to 3.
Mr. S. D. Patil, Advocate for respondent No.4
Mr. A. Kakodkar & Ms. Amanda Godinho, Advocates for respondent No.5.
Mr. C.A. Ferreira & Mr. S. Pereira, Advocates for respondent Nos.6 to 8.

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CORAM : R.M. BORDE & PRITHVIRAJ K. CHAVAN, JJ

Reserved on : 12th December, 2018.
Pronounced on : 5th April, 2019.

JUDGMENT (Per: R.M. Borde, J)

1 Heard.

2 Rule. With the consent of the parties, petition is taken-up for final disposal at admission stage.

3 The petitioners state that Marine Infrastructure (Goa) Pvt. Limited (MIG), is a joint venture Company between Infrastructure Logistic Private Limited, a Company incorporated in India and Fomento Associated Singapore Holdings Pvt Ltd, a

Company incorporated in Singapore, who purchased and imported a floating crane namely FC Maria Laura in India, Goa in the year 2011. Marine Infrastructure Goa Private Limited (herein after referred to 'MIG') purchased FC Maria Laura crane which was newly constructed in Batam, Indonesia from Orchard Maritime Services Pte Limited, a company incorporated in Singapore pursuant to Bill of Sale in the year 2011 for a total basic value of USD 11,102,472/- which correspond to Rs.49,96,11,240/-. The Company i.e. MIG paid requisite import duty amounting to Rs.7,95,45,874/- on 26.5.2011 pursuant to the examination and appraisal of custom duty duly made by the appraiser of customs, Customs House, Goa, by considering the Bill of Entry for Home consumption dated 19.5.2011 and other documents.

4 The Customs authority issued statutory clearance for home consumption in the form of 'Out of Charge' order dated 14.6.2011. According to the petitioners, the floating crane is employed for loading and unloading of cargo. FC Maria Laura was used in September, 2012 for loading of iron ore exported from State of Goa from Mormugoa port. On account of suspension of mining operations, it became unviable to continue to keep the said floating crane un-utilized after September 2012. It is contended that, due to this circumstance, MIG sold FC Maria Laura to a Company in Indonesia Viz. P.T. Indonesian Fortune

Lloyd, Kebon Bawang VI by way of invoice dated 15.4.2013. The description of the FC Maria Laura has been recorded in the Bill of Entry dated 19.5.2011, at the time of import, as well as in the shipping bill for export dated 17.4.2013 and is one and the same. According to the petitioners, in pursuance to the Judgment of the Honourable Supreme Court, in case of Goa Foundation (2014 6 SCC 590), in the year 2015-2016, mining operations once again commenced in the State of Goa and as such, there was a need to engage FC Maria Laura for loading of iron ore cargo. The petitioner purchased FC Maria Laura from P.T. Indonesian Fortune Lloyd vide Bill of Sale dated 30.12.2015 pursuant to invoice dated 21.12.2015 by paying the basic value of Rs.53,96,00,000/-. The bill of entry for home consumption bearing No.3989260 dated 21.12.2016 was generated by respondent No.4. Thereafter, examination was conducted and FC Maria Laura was finally cleared by respondent No.4 by issuing 'Out of Charge' order dated 5.2.2016 which is a final clearance order for home consumption. According to the petitioners, the information generated in the Bill of Entry for Home Consumption, which was fed into the system by respondent No.4 clearly indicates the description of the vessel being re-imported. In the Bill of export, it is clearly mentioned that the same vessel was exported in the year 2013. It is thus contended that the description of the vessel made in the Bill of Entry for home consumption dated 21.2.2016 is identical and the same as the

description of vessel made in the Bill of Shipping for export dated 17.4.2013. According to the petitioners, at the time of re-import of the vessel, 2 Grabs along with Lube oil and fuel were also imported. The Customs Department was appraised of the 2 Grabs import and the Lube oil and fuel and customs duty to the extent of Rs.8,72,300/- in respect of Grabs and Rs.1,55,200/- in respect of lube oil and fuel was paid by the petitioners on 5.2.2016. On being satisfied that the proper import duty has been paid, the appraiser of the customs and Prevention Officer was pleased to pass an order permitting clearance of FC Maria Laura for home consumption in terms of section 47 of the Customs Act, after assessment by way of examination order. According to the petitioners, the appraiser officer being satisfied that FC Maria Laura was not prohibited from being exempted and also upon being satisfied that no export duty was payable on the sale price of FC Maria Laura, was pleased to pass LET Export Order permitting clearance of FC Maria Laura for export. The date of export is 18.4.2013 (LET Export order) and the date of re-import is 5.2.2016 (Out of Charge Order). According to the petitioners, no import duty was payable on re-import of FC Maria Laura and as such, Out of Charge Order has been issued by the Competent Authority.

5 The action of the respondent of seizure of the vessel under a Seizure Memorandum dated 12.1.2018 is a matter of challenge

in the instant petition. The petitioners contend that, after lapse of two years, from the Entry of FC Maria Laura in Indian water, the office bearers of the petitioners received a call from Office of DRI to explain the transaction of re-import of FC Maria Laura in the month of August, 2017. The sequence of events after telephonic call have been recorded in the petition in paragraph No.22. Ultimately on 1.1.2018, the petitioners received a Notice /summons, calling upon the authorized representative of the petitioners to remain present at Mumbai on 4.1.2018. According to the petitioners, as the Chief Financial Officer of the petitioner Mr. Apurva Mishra who was conversant with the facts, was abroad and as such, by e-mail dated 2.1.2018, he informed the respondent No.2 that he would remain present in India between 20.1.2018 and 25.1.2018 and would attend respondent No.2 during the aforesaid time. However, according to the petitioners, respondent No.2 on 2.1.2018 itself concluded that the petitioners were not cooperating with respondent No.2 and that there was evasion of duty to the tune of Rs.6 crores. Respondent No.3 also threatened to resort to coercive action. Under these circumstances, one Mr. Koustubh Savkar, who was also conversant with the re-import transactions, attended the office of respondent No.2 on 4.1.2018. Mr Savkar was asked to deposit Rs.6 crores or to face seizure of vessel. It is further contended by the petitioners that finally on 12.1.2018, respondent No.3 proceeded to confiscate the vessel and served

seizure memo and drawn panchanama on the same day.

The Panchanama of the seizure memo dated 12.1.2018 reads thus:-

" SEIZURE MEMORANDUM

An investigation into the import of @ One unit of Motor Vessel MV Maria Laura" by M/s Formento Resources Pvt. Ltd., is being conducted by the Mumbai Zonal Unit, Directorate of Revenue Intelligence. From the investigation and evidences gathered, it appears that the import of the "one Unit of Motor Vessel MV Maria Laura" vide Bill of Entry No.3989260 dated 21.01.2016 had been made by claiming the exemption under Notification 94/96-Customs dated 16.12.1996, meant for re-imported goods, thus claiming "NIL' BCD on the aforesaid goods. On the aforesaid goods. It had been sold by the actual owner M/s Marine Infrastructures (Goa) Pvt. Ltd. To M/s P.T. Indonesian Fortune Lloyd in Indonesia as a part of commercial business dealing and the same had been purchased by M/s Fomento Resources Pvt. Ltd from M/s P.T. Indonesian Fortune Lloyd as part of another deal. In both the commercial dealings the sale of the vessel was outright and borne out of due negotiations and dealings.

As there is reason to believe that the aforesaid "One Unit of Motor Vessel MV Maria Laura" totally valued at approximately Rs.66,01,26,405/- had been imported in contravention of the provisions of Section 111 of the Customs Act, 1962. Therefore, the said 'One Unit of Motor Vessel MV Maria Laura now renamed as MV Maria Laura 1" totally valued at approximately Rs.66,01,26,405/- imported vide Bill of Entry No.3989260 dated 21.01.2016 is hereby seized under the section 110(1) OF THE CUSTOMS Act, 1962.

Therefore, in exercise of powers conferred on me under Section 110(1) of the Customs Act, 1962, I, Shri Rajesh Dabas, Senior Intelligence Office, Directorate of Revenue Intelligence, Goa Regional Unit, F-3, F-4, Block-A, Cacullo enclave, St. Inez, Panaji, Goa, hereby seize the

above said "One Unit of Motor Vessel MV Maria Laura now renamed as MV Maria Laura 1" and hereby direct not to remove, part with or otherwise deal with the said vessel in any manner except with the prior permission from the Deputy Director, CI Cell, Directorate of Revenue Intelligence, Mumbai Zonal Unit.

Sd/-
(RAJESH DABA)
SENIOR INTELLIGENCE
OFFICER,
DRI, GOA REGIONAL UNIT,
PANJI, GOA "

6 The petitioners are objecting to the action of seizure of the vessel and are seeking quashment of the seizure memo dated 12.1.2018 on several grounds.

7 According to the petitioners, the appropriate officer, upon application of mind, having concluded that, no import duty is leviable on re-import of FC Maria Laura and having granted clearance in discharge of statutory duty, the seizure of FC Maria Laura by respondent No.2 on the ground that import duty was payable and has not been paid, on the face of it is arbitrary, illegal, high handed and unauthorized. The seizure notices having not been preceded by way of show cause notices, an opportunity to file reply and without extending hearing, is vitiated on account of gross violation of the principles of natural justice, fair play and equity and as such is liable to be quashed. According to the petitioners, the seizure memo does not record any ' *reason to believe* ' that the import of vessel has been done in contravention of provisions of Customs Act, 1962. There is no

material before respondent Nos.2 and 3 to suggest that the proper authority has been misled or that any material information has been suppressed. In fact, on perusal of the record and on examination of the vessel, respondent No.4 has issued the 'Out of Charge' order in observance of the statutory provisions, which aspect has not at all been considered by respondent Nos.2 and 3, while resorting to the harsh and abrupt measure of seizure. The phrase 'reason to believe' appearing in Section 110 of the Customs Act, means objective reason which should be borne and supported from record/material and not subjective reason which is capable of mischief/arbitrary exercise of power. The petitioners contend that the goods can be confiscated if the same are imported in violation of Section 111 of the Customs Act, 1962 and it has not been indicated in the Seizure Memorandum that the goods are liable to be confiscated by taking recourse to the aforesaid provision. The case of the petitioners is fully covered by the exemption Notification No.94/96 dated 16.12.1996 issued under section 25(1) of the Customs Act, 1962. According to the petitioners, once a finding has been recorded by the authorized officer that no import duty is payable, in view of the Exemption Notification, the action taken by other respondent, without examining the alleged contentions of inapplicability of the Notification and without extending opportunity of hearing to the petitioners to satisfy the authority and without recording the reasons, it was arbitrary and

inappropriate to take harsh measures.

8 Section 20 of the Customs Act, 1962 relates to re-importation of goods, which reads, " If goods are imported into India after exportation there-from, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof."

Section 25(1) of the Act relates to power to grant exemption from duty which reads thus:-

*" Section 25. **Power to grant exemption from duty** - (1)
If the Central government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty or customs leviable thereon. "*

9 The petitioners contend that, since the vessel is re-imported after the export, Notification No.94/96 dated 16.12.1996 has applicability and the case is covered by Entry Sr. No.3 which does not call for payment of duty. The relevant extract of Notification Annexure-I is reproduce below:-

" Notification No.94/96-Cus Dated 16-12-96

Exemption on re-importation of goods exported under claim of drawback or under bond - In exercise of The powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), and in super-session of the notification of the Government of India in the Ministry of Finance, (Department of Revenue), No.97/95-Customs, dated the 26th May, 1995 the Central Government, being satisfied that

it is necessary in the public interest so to do, hereby exempts the goods falling within any chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the Table hereto annexed (hereinafter referred to as the said Table) when re-imported into India, from so much of the duty of customs leviable thereon which is specified in the said First Schedule, the additional duty leviable thereon under section 3 of the said Customs Tariff Act and special duty of customs leviable under sub-section (1) of section 68 of the Finance (No.2) Act, 1996 (33 of 1996), as is in excess of the amount indicated in the corresponding entry in column (3) of the said Table.

TABLE

Sl. No.	Description of goods	Amount of duty
(1)	(2)	(3)
1	Goods exported - (a) under claim for drawback of any customs or excise duties levied by the Union.	Amount of drawback of customs or excise duties allowed at the time of export
	(b) under claim for drawback of any excise duty levied by a State	Amount of excise duty leviable by State at the time and place of importation of the goods.
	(c) under claim for rebate of central excise duty	Amount of rebate of Central Excise duty availed at the time of export
	(d) under bond without payment of Central excise duty	Amount of Central Excise duty not paid
	(e) under duty exemption scheme (DEEC) of Export Promotion Capital Goods Scheme (EPCG)	Amount of excise duty leviable at the time and place of importation of goods and subject to the following conditions applicable for such goods - (I) DEEC book has not been finally closed and export in question is delogged from DEEC book. (ii) In case of EPCG scheme the period of full export performance has not expired and necessary endorsements regarding re-import have been made. (iii) The importer had intimated the details of the consignment re-imported to the (Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise) in charge of the factory where the goods were manufactured and to the licensing authority regarding the fact of re-importation and produces a dated acknowledgement of such

		intimation at the time of clearance of goods. (iv) The manufacturer – exporters who are registered with Central Excise Department may be permitted clearance of such goods without payment of Central Excise duty under transit bond to be executed with the customs authorities, such bond will be canceled on the production of certificate issued by Central Excise authorities about receipt of re-imported goods into their factory.
2	Goods, other than those falling under Sl. No.1 exported for repairs abroad	Duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways.
2A	Goods (exported) under Duty Entitlement Passbook (DEPB) Scheme	Amount of Central Excise duty leviable at the time and place of importation of goods plus amount of drawback of Excise duties allowed at the time of exports, subject to the condition that the importer produces a Duty Entitlement Passbook before the proper officer of the Customs for debit of an amount equal to the amount of Duty Entitlement Passbook scheme (DEPB) credit which was permitted by the Government of India in the Ministry of Commerce for the products exported at the time of export of the consignment which is being re-imported.
2B	Cut and polished precious and semiprecious stones exported for treatment abroad as referred to in Paragraph 4A.20.1 of the Foreign Trade Policy, other than those falling under Sl.No.1.	Duty of Customs which would be leviable if the value of re-imported precious and semiprecious stones after treatment were made up to the fair cost of treatment carried out including cost of materials used in such treatment, whether such costs are actually incurred or not, insurance and freight charges, both ways.
2C	Parts, components of aircraft replaced or removed during the course of maintenance, repairs or overhaul of the aircraft in a special Economic Zone and brought to any other place in India Explanation - For the purpose of this Notification, "Special Economic Zone" has the	Nil.

	meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005).	
3	Goods other than those falling under [Sl.Nos.1, 2, 2A, 2B and 2C] old [Sl.Nos.1 and 2]	NIL

Provided that the Assistant Commissioner of Customs is satisfied that-

(a) the goods [other than the goods exported under the Duty Exemption Scheme (DEEC) or the Export Promotion Capital Goods Scheme (EPCG) or Duty Entitlement Passbook Scheme (DEPB) are re-imported within three years after their exportation or within such extended period, not exceeding two years, as the Commissioner of Customs may on sufficient cause being shown for the delay, allow, and in the case of goods exported under the Duty Exemption Scheme (DEEC) or the Export Promotion Capital Goods Scheme (EPCG), or Duty Entitlement Passbook Scheme (DEPB), re-importation of such goods takes place within one year of exportation or such extended period not exceeding one more year as may be allowed by the Commissioner of Customs on sufficient cause being shown;

(b) the goods are the same which were exported;

(c) in the case of goods falling under Sr.No.2 of the Table there has been no change in ownership of the goods between the time of export of such goods and re-import thereof;

(d) in the case of the goods falling under Serial numbers 1, 2A and 3 of the Table and where the value of exported goods was counted towards fulfillment of export obligation, the amount of customs duties leviable on the duty free inputs obtained from Nominated Agencies but for the exemption availed under the Ministry of Finance (Department of Revenue) notification No.56/2000-Customs dated the 5th May, 2000 (vide G.S.R. 399 (E), dated the 5th May, 2000) and notification No.57/2000-Customs dated the 8th May, 2000 (vide G.S.R.413 (E) dated the 8th May, 2000] shall also be paid in addition to amount of duty specified in column (3) of the Table];

[(e) in the case of goods falling under Sl.No.2C of the TABLE, the goods are returned to the owner of the aircraft without any sale].

Provided further nothing contained in this notification shall apply to re-i-ported goods which had been exported -

(a) by a hundred percent export-oriented undertaking or a unit in a Free Trade Zone as defined under section 3 of the Central Excise Act, 1944 (1 of 1944);

(b) from a public warehouse or a private warehouse appointed or licensed, as the case may be, under section 57 or section 58 of the Customs Act, 1962 (52 of 1962).

Explanation – For the purpose of this notification:-

..... .”

10 According to the petitioners the Notification is perfectly attracted and no duty whatsoever, is payable on re-import of FC Maria Laura and as such, proper officer did not levy any import duty when the vessel was re-imported and Bill of Entry for home consumption with necessary details was lodged with the proper officer of the customs department and upon consideration of all the relevant aspects, the order clearing re-import of the vessel for home consumption has been issued. According to the petitioners, the transactions relating to FC Maria Laura cannot be classified as goods exported under Sr.No.1 of the Notification. So also the case would not fall within entry No.2 i.e. goods other than those falling under Sr.No.1 exported for repairs abroad. The vessel, admittedly, was not exported for repairs abroad. Similarly, the case also would not be covered under entry Sr.No.2(a) 2(b) and 2(c) of the Notification which are referred to goods exported under duty entitlement passbook (DEPB) scheme, the precious and semi-precious stones exported for treatment and parts and components of aircrafts respectively.

Since the case could not be covered by any of the entries at Sr.No.1, 2 and 2(a), 2(b) and 2(c), the entry No.3 which refer to goods other than those falling under Sr. Nos.1, 2 2a, 2b and 2c would be attracted which does not call for payment of any duty. The proviso (a) of the Exemption Notification requires that the goods must be re-imported after three years after their exportation and according to the petitioners, this criterion is satisfied in case of FC Maria Laura which was exported on 27.4.2013 and imported within three years i.e. 21.1.2016. Another requirement recorded in proviso (b) is that the goods are the same goods which were exported. The FC Maria Laura is the same floating crane without there being any change of whatsoever nature. It has been re-imported within three years from the date of its exportation. The Exemption Notification provided that the goods shall not be deemed to be the same if they are re-imported from abroad after being subjected to re-manufacturing or reprocessing through melting, recycling or recasting. FC Maria Laura has been imported in the same status and state in which it was exported. There was no re-manufacturing or reprocessing taken place.

11 Section 110 of the Customs Act, 1962 authorizes proper officer, if he has a reason to believe that goods are liable to confiscation under the Act, he may seize such goods. Section 111 refers to confiscation of improperly imported goods. Clause '(o)' of section 111 refers to category of goods brought from

place outside India liable to confiscation which reads, "*any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer* "

According to the petitioners, clause (o) of Section 111 also would not be attracted.

12 The goods are exported neither levying any duty, nor there is any prescription in respect of import under the Act or any other law, for the time being in force, in respect of the condition which is not observed. The petitioners contend that even if assuming that the respondents have any reservation as regards the applicability of Exemption Notification, section 28 of the Customs Act, 1962 provides for recovery of duty not levied or not paid or short levied or short paid or erroneously refunded. It was open for the concerned customs authority to take recourse to section 28 of the Act and the invocation of the drastic action of seizure was uncalled for.

13 The petitioners contend that the floating crane was in operation for a period of about two years, without there being any breach of any condition or any complaint and as such, there was no reason to invoke the drastic action of seizure after lapse of a period of two years without recording the reasons therefor.

14 Respondents No.2 and 3 have opposed entertainability of the petition and for grant of relief on several grounds. It is contended that the petition is not maintainable since, there are alternate remedies available under the Customs Act, 1962 which the petitioners have not availed. It is contended that the grievance of the petitioners can be redressed if the petitioners tender an application under section 110 before the Commissioner of Customs for release of ship and in the event of issuance of adverse order, an appeal has been provided to CESTAT. It is contended that the petition is premature since the investigation case is still under process and would conclude by way of show cause notice under section 28 read with section 12 of the Customs Act, 1962 within a period of six months from the date of seizure and the petitioners can approach the adjudicating authority to decide the case on merits. The respondents contend that the petition involves a fact finding exercise which need not be entertained in exercise of writ jurisdiction. According to the respondent, the petitioners have wrongly claimed exemption under the Notification and thereby evaded customs duty. According to the respondents, it is M/s Orchard Maritime Services Pte Ltd which purchased the ship vide Bill of Entry dated 19.5.2011 which has been subsequently exported to M/s P T Indonesian Fortune Lloyd vide shipping Bill dated 17.4.2013. The ownership of the vessel was transferred by Maritime Services Infrastructure to M/s P.T. Indonesian Fortune Lloyd and

the said export is in fact a sale of asset. Subsequently, in the year 2016, the goods with description one-unit motor vessel MV Maria Laura was purchased by M/s Fomento Resources Pvt. Ltd. From P.T. Indonesian Fortune Lloyd, Indonesia. According to the respondents, the said transaction was an independent commercial transaction. The respondent contend that the import transaction has been again branded as re-import and the custom duty has been evaded. According to the respondents, the petitioners cannot claim the import of the vessel as a re-import by them. The respondents also contend that since it is not a case of re-import because the entities i.e. MIG and Fortune Lloyd are different entities, the benefits under the Exemption Notification cannot be claimed. The respondents also contend that unless the goods are re-imported under duty drawback, rebate or bond and those goods that were rejected abroad and had to be re-imported and secondly those goods that were exported for the purpose of repairs and were re-imported after such repairs only are entitled to claim exemption on re-import. According to the respondents, since the petitioners have purchased vessel, they cannot claim that it is a case of re-import entitling to exemption under Notification No.94/96 dated 16.12.1996. The respondents, thus contend that firstly the Exemption Notification applies only in case of re-import of goods exported under claim of duty drawback or under bond and secondly, the petitioners cannot claim benefits since, they had not exported the vessel in first

place and that the draw back has not been claimed in the Bill of Entry. The respondents contend that the proper officer, after assessing the Bill of Entry as per the declaration of the importer, filed under section 46 of the Customs Act, 1962, had erroneously passed the 'Out of Charge' order. The respondents further contend that an intelligence was developed by DRI, Mumbai that the importer had wrongly declared that they have re-imported the said vessel and thereby wrongly claimed exemption under Notification and as such, the action has been taken.

The respondents thus contend that the petition does not deserve to be entertained at this stage and is liable to be rejected.

15 During continuance of the petition, by way of interim order, the petitioners were permitted to use FC Maria Laura for loading/export operations within the jurisdiction of respondent No.4 with a conditions that the petitioners shall not create a third party right in respect of the said vessel and shall not part with the vessel or move the vessel beyond the jurisdiction of forth respondents till further orders. An application bearing MCA No.971/2018 is presented for grant of permission to take the floating crane to Port Redi and to bring back the same in Goan waters within 14 days from the date of passing of the order. This Court, after hearing the parties, granted permission to the petitioners to take the vessel out of territorial jurisdiction of Goan water on furnishing a bank guaranty for an amount of

Rupees Six crore to this Court which was directed to be kept alive for a period of six months. Availing the opportunity granted, the vessel was taken out and it is reported to have been brought back within the territorial jurisdiction. The bank guaranty furnished by the petitioners on 1.12.2018 is kept alive.

16 The respondents object to entertainability of the petition on the grounds:-

It being premature, alternate remedy is available and no fundamental rights are shown to have been violated.

17 In the instant matter, at this stage, this Court is not called upon to consider the issue of liability of the petitioners towards payment of customs duty or the penalty and the proceedings initiated by the respondents are yet to be concluded. This Court also is not proposing to interfere in the matter of continuation of the proceedings for assessment of liability of the petitioners. It would be open for the respondents to initiate or continue the proceedings and arrive at conclusion as permissible in law. The issue that is being dealt with is only as regards the correctness of the extreme and exceptional action taken by the respondents of seizure of the vessel. The petitioners also neither contemplate in the instant petition, interference in the ongoing proceedings, nor the issue as regards permissibility of the imposition of extreme action of seizure and penalty arising therefrom, since

the decision is yet to be taken by the respondents. The limited issue that is required to be considered is, regarding the correctness of the action of the seizure of the vessel. There would be absolutely no interference in the proceedings for recovery of dues and by entertaining the instant petition absolutely, no hindrance is created in the on going proceedings.

18 Reliance is placed on the Judgment in the matter of **Assistant Collector of Central Excise versus Jaison Hosiery Industries** (1971 Law Suit (SC 309.)

It is observed that the High Court will be careful to be extremely circumspect in granting relief specially during the pendency of criminal investigation. The investigation of a criminal offence is very sensitive phase where the investigating authority has to collect evidence from all odd corners and anything that is likely to thwart its course may inhibit the interests of justice. It is further recorded that at the stage of investigation, it is risky for the Court to intervene except where manifest injustice cries for the order of the Court.

The Judgment cited is not applicable since the case does not relate to any criminal investigation.

19 In the matter of **Authorized Officer, State Bank of Travancore & another versus Mathew K C** (2018 Law Suit SC 52), it is observed in paragraph No.6 that the normal rule is that a writ under article 226 of the Constitution ought not be

entertained, if alternate statutory remedies are available except in cases falling within the well defined exceptions as observed in Commissioner of **Commissioner of Income Tax & others versus Chhabil Dass Agarwal** (2014 1 SCC 603), wherein it has been observed as follows:-

*"15. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in **Thansingh Nathmal case, Titaghur Paper Mills case** and other similar judgments that the High Court will not entertain a petition under article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation "*

20 In the matter of **K O AND IN INDIA V/S COMMISSIONER OF CUSTOMS AND EXCISE, HYDERABAD (2001 Law suit (AP) 1231**, the issue that arose before the Court for consideration was, as regards the validity and legality of seizure of certain goods intended to be exported to Libya. Reference is made to paras No.8 and 9 of the Judgment, which read thus:-

"{8} The impugned seizure of the goods is effected under sub-section (1) of Section 110 of the Act. It reads:-

" 110. Seizure of goods, documents and things (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer."

{9} The condition precedent to invoke the power of seizure under Subsection (1) of section 110 is that the appropriate officer should have reason to believe that goods sought to be seized are liable to confiscation under the provisions of the Act. The phrase 'reason to believe' occurring in sub-section (1) of Section 110 of the Act fell for consideration in large number of cases. In *Narayanappa and Ors. v. Commissioner of Income Tax, Bangalore*, the Supreme Court dealing with the power of Income Tax Officer in initiating proceedings under section 34(1)(a) of the Income Tax Act, 1922, and interpreting the phrase 'reason to believe' occurring in the section opined that formation of the belief is a condition precedent to exercise the power. At the same time, the Supreme Court was pleased to observe:-

" but the legal position is that, if there are in fact some reasonable grounds for the Income Tax Officer to believe that there had been any non-disclosure as regards any fact, which could have a material bearing on the question of under-assessment, that would be sufficient to give jurisdiction to the Income Tax Officer to issue the notice under section 34. Whether these grounds are adequate or not is a matter for the Court to investigate. In other words, sufficiency of the grounds which induce the Income Tax Officer to act is not a justiciable issue. "

21 In the instant matter, there is absolutely no material placed, nor is there any indication in the seizure memo as

regards the reason to believe that the material collected or relied upon is available for taking such drastic action. It is true that sufficiency of the grounds is not a justiciable issue, however, there must exist a ground basically which needs to be reflected in the order. Judicial review is not against the decision as such, but against the decision making. The Court cannot dis-set each and every materials which has gone into decision making, and in the reported matter, exactly such approach was adopted. It is canvassed by the petitioners that there is no material before the officer for forming an opinion and the question is not being raised as regards adequacy of such material.

22 Reliance is placed on the Judgment in the matter of **Indru Ramchand Bharvani versus Union of India reported in 1988** Law suit (SC) 427. In para No.16 of the Judgment, it is observed thus:-

" 16. The reasonable belief as to smuggled goods, as enjoined in the Act, had been explained by this Court in State of Gujrat v. Mohanlal Jitmalji Porwal. There this Court observed whether or not the officer concerned had seized the article under the 'reasonable belief' that the goods were smuggled goods, is not a question on which the court can sit on appeal. The circumstances under which the officer concerned entertains reasonable belief, have to be judged from his experienced eye who is well equipped to interpret the suspicious circumstances and to form a reasonable belief. See also M.A. Rasheed v. State of Kerala and Barium Chemicals Ltd. v. Company Law Board. It must be reiterated that the conclusions arrived at by the fact-finding bodies, the tribunal or the statutory authorities, on the facts, found

that cumulative effect or preponderance of evidence cannot be interfered with where the fact-finding body or authority has acted reasonably upon the view which can be taken by any reasonable man, courts will be reluctant to interfere in such a situation. Where, however, the conclusions of the fact-finding authority are based on no evidence then the question of law arises and that may be looked into by the courts but in the instant case the facts are entirely different. See the principles enunciated by this Court in M/s Mehta Parikh and Co. v. commissioner of INCOME TAX. The same view was expressed by this court in Pukhruj v. D.R. Mohli where while dealing with the provisions of the Sea Customs Act, 1878, this court held that S.178 of the said Act imposed the onus of proof that the gold was not smuggled, on the party if it was seized under the Act. The question whether it was under the reasonable belief or not, was a justiciable one. The facts of this case certainly warrant the formation of belief. In any case, once it is held that there was material relevant and germane, the sufficiency of the material is not open to judicial review. "

23 The Division Bench of Punjab & Haryana High Court in the matter of **MAPSA Tapes Pvt Limited versus Union of India (2006 Lawsuit (P & H) 383)** while interpreting the expression 'reason to believe' has observed in paragraph No.19 of the Judgment thus:-

" {19} Expression 'reason to believe' has been interpreted in several decisions. In Income-tax Officer, Special Investigation Circle 'B', Merrut v. M/s Seth Brothers and Ors., while interpreting an identical expression used in Section 132 of the Income-tax Act, 1961, it was observed:

" The Section does not confer any arbitrary authority upon the revenue officers. The Commissioner of the

Director of Inspection must have, in consequence of information, reason to believe that the statutory conditions for the exercise of the power to order search exist. He must record reasons for the belief and he must issue an authorization in favour of a designated officer to search the premises and exercise the powers set out therein. The condition for entry into and making search of any building or place in the reason to believe that any books of account or other documents which will be useful for, or relevant to, any proceeding under the Act may be found. If the officer has reason to believe that any books of account or other documents would be useful for, or relevant to, any proceedings under the Act, he is authorized by law to seize those books of account or other documents, and to place marks of identification therein, to make extracts or copies therefrom and also to make a note of any inventory of any articles or other things found in the course of the search. Since by the exercise of the power a serious invasion is made upon the rights, privacy and freedom of the taxpayer, the power must be exercised strictly in accordance with the law and only for the purposes for which the law authorizes it do be exercise. If the action of the officer issuing the authorization or of the designated officer is challenged, the officer concerned must satisfy the court about the regularity of his action, (emphasis supplied). If the action is maliciously taken or power under the section is exercised for a collateral purpose, it is liable to be struck down by the Court, if the conditions for exercise of the power are not satisfied, the proceeding is liable to be quashed. But, where power is exercised bonafide, and in furtherance of the statutory duties of the Tax Officer, any error of Judgment on the part of the offices will not vitiate the exercise of the power. Where, the Commissioner entertains the requisite belief and/or reason recorded by him authorizes a designated officer to enter and search premises for books of account, the documents relevant to or useful for any proceeding under the Act, the Court in a petition by an aggrieved person cannot be asked to substitute is own

opinion whether an order authorizing search should have been issued. Again any irregularity in the course of entry, search and seizure committed by the officer acting in pursuance of the a authorization, will not be sufficient to vitiate the action taken, provided the officer has in executing the authorization acted bonafide.

24 Reliance is placed on the Judgment of the Honourable Supreme Court in the matter of **Assistant Collector of Central Excise, Chandan Nagar, West Bengal versus Dunlop India Limited & others (1985 1 SCC 260)**, wherein it has been observed that:-

"The interim order should be made circumspectly in the interests of justice and balance of convenience must be clearly in favour of the making of an interim order . If alternative statutory remedy is available, mere existence of a prima facie case is not sufficient to grant interim orders against revenue on furnishing bank guarantee, where such order would cause inconvenience to the Government and would result in Impairment of public interest. It is observed that where matters of public revenue are concerned, interim orders ought not be granted merely because a prima facie case has been shown. More is required. The balance of convenience must be clearly in favour of the making of an interim order and there should not be the slightest indication of a likelihood of prejudice to the public interest. It is further observed that petitions under article 226 are filed solely for the purpose of obtaining interim order and thereafter prolong the proceedings by one device or the other. It is observed that article 226 has been made to short circuit or circumvent the statutory procedure. It is only where statutory remedies are entirely ill suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where private or public wrong are so inextricably mixed up and the

prevention of public injury and the vindication of the public justice require it that the course may be had to article 226 of the Constitution. But then, Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely, the matters involving the revenue where statutory remedies are available are not such matters. The Court can take judicial notice of the fact that the vast majority of the petitions under article 226 are filed solely for the purpose of obtaining interim order and there after to prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged. "

25 It is contended, relying upon the Judgment in the matter of **Union of India versus Sigma Electronics 1996 Lawsuit (cal) 162** that the exercise of power by the High Court is of widest possible amplitude but that by itself does not give right to interfere without there being any infringement of any right. There must be breach of legal right and the law is well settled by this Court. It is contended that relying upon the Judgment in the matter of **Union of India versus Auto Ignition Limited and another 2003 1 BCR 305** that the dispute as to classification of goods and as to whether or not they are covered by exemption notification relates directly and proximately to the rate of duty applicable thereto for purpose of assessment and thus it is urged that the petition shall not be entertained.

26 It is contended that, the seizure memo does not indicate that the proper officer was possessed of any material to form his opinion that the vessel is liable for confiscation under the Act.

The terms '*the reason to believe*' appearing in section 110 does not mean the subjective satisfaction of the officer concerned. The officer has to act in a reasonable manner and the exercise of power shall not be arbitrary and the powers are liable to be used in accordance with the restraints imposed by law.

27 Reliance is placed on the Judgment of the Apex Court in the matter of ***Tata Chemicals Ltd. v. Commissioner of Customs (2015 (11) SCC 628)***.

In the reported matter, the Customs Officer drew samples from the goods loaded in one of the vessels i.e. cooking coal, imported from Australia and a differential duty was arrived at under section 18 of the Customs Act. The revenue contended that the imported goods can be subjected to chemical and other tests for the purpose of assessment of duty thereon. Whether the proper officer deemed it necessary to subject the imported goods to chemical or other tests ? While dealing with the contentions, the Honourable Supreme Court has observed in paragraph Nos.14 and 15 of the Judgment as reproduced below:-

" 14. In our opinion, the expression "deems it necessary" obviously means that the proper officer must have good reason to subject imported goods to a chemical or other tests. And, on the facts of the present case, it is clear that where the importer has furnished all the necessary documents to support the fact that the ash content in the coking coal imported is less than 12%, the proper officer must, when questioned, state that, at the very

least, the documents produced do not inspire confidence for some good prima facie reason. In the present case, as has been noted above, the Revenue has never stated that CASCO's certificate of quality ought to be rejected or is defective in any manner. This being the case, it is clear that the entire chemical analysis of the imported goods done by the Department was ultra vires Section 18(b) of the Customs Act.

15. Statutes often use expressions such as "deems it necessary", "reason to believe" etc. Suffice it to say that these expressions have been held not to mean the subjective satisfaction of the officer concerned. Such power given to the concerned officer is not an arbitrary power and has to be exercised in accordance with the restraints imposed by law. That this is a well settled position of law is clear from the following judgments. See: Rohtas Industries Ltd. v. S.D. Agarwal, (1969) 3 S.C.R. 108 at 129. To similar effect is the judgment in Sheo Nath Singh v. Appellate Assistant Commissioner of Income Tax, Calcutta, (1972) 1 SCR 175 at 182. In that case it was held as under:

"...There can be no manner of doubt that the words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income Tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income Tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The Court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the Court." See also Bar Council of Maharashtra v. M.V. Dabholkar, [1976] 2 S.C.R. 48 at 51. N. Nagendra Rao & Co. v. State of A.P. (1994) 6 SCC 205 at 216.

appear that the proper officer has not indicated any reason to believe that the goods are liable to confiscation. It is not a matter of controversy that by application of Exemption Notification, no duty was levied and 'out of charge' order was issued two years back. Even otherwise, it was open for the respondent authorities to initiate proceedings under section 28 of the Customs Act, however, without taking the steps permissible in law, the extreme action of seizure of goods has been resorted to which appears to be high handed and arbitrary.

29 It is the contention of the petitioners that the proper officer has issued 'out of charge' order and the vessel was cleared. The customs authorities accepted the applicability of Exemption Notification and duty was not levied. It is contended that, once the goods are removed from obtaining port clearance, there can arise no question of confiscation under section 101-J of the Customs Act and as such, the action of seizure of the vessel is bad in law.

Reliance is placed on a Judgment in the matter of **Commissioner of Customs (Import) , New Custom House, Ballard Estate versus Hundai Steel Industries Co. Ltd and others** 2017 SCC on line Bombay 6722. In paragraph Nos.27 and 28 of the Judgment, the Court has observed thus:-

" 27. We have to keep in mind the provisions and the power and scope of High Court to interfere with the findings so arrived at, by the CESTAT. Having once noted above, we

have gone through the reasons while setting aside the order of confiscation and penalty. The CESTAT has considered the issue of "port clearance" and its procedure, as prescribed under Section 42 (2)(d) read with Section 111(j) of the Customs Act. It is noted that the fact of grant of port clearances, which includes the safeguard and security required for the Custom House were never recalled. The goods were permitted to remove from the customs area, by the concerned officers. The importers and/or their agents or employees cannot be held responsible for removal from the Customs area of the port in such situation. The CESTAT has noted that the "removal" and "clearance" cannot be equated to clear the goods for home consumption under Section 47 of the Customs Act. The permissions to clear the goods would not be in violation of Section 111(j), which is applicable to "removals" and not to the "clearance". We also endorse these reasons.

28. The CESTAT has noted that even, the no action of appraisal, cannot be a reason to hold the Respondents liable. It is noted that this is not the case of mis-description and of any breach regarding the declaration. The goods were under import. The Appellants were ready with the duty/payment. Once the goods are removed by obtaining port clearance, there was no question of such confiscation under provision of section 111(j) of the Customs Act and of penalty on the Respondents. There was no loss of Duty. This is not a case that Respondents deliberately, by breaching the basic provisions of law, had removed unaccounted goods, without written permissions. The show cause notices itself noted that, all supporting documents, materials and requisite permissions were placed on record. The nature of contract and short duration and the purpose and object of these imports and practical part of removal of vessel with goods through the port, after getting the clearances and permissions, cannot be overlooked while considering the allegation of the breach of provisions of the Act. All the departmental officers of the respective Departments, ought to have taken decisions simultaneously. As noted, even by the CESTAT that the removal were after due permission of conversion, preventive checks on ship stores and port clearance obtained, which in a given case could have been refused and revoked by the authorities, immediately before the show cause notice and the actions taken. We have declined to accept the case of corruption by evasion of custom duty by the Respondents, as alleged without supporting material and /or the prior inquiry.

30 Applying the ratio laid down in the aforesaid Judgments, in the instant matter also, the vessel has been cleared and 'out of charge' order has also been issued. As such, the issuance of order of seizure is bad in law. The contention that, it is a case of misrepresentation or fraud also does not deserve consideration. The vessel has been released after issuance of due permission. Even in case of mere non payment of duty, it cannot be treated and read as collusion or willful misrepresentation or suppression of facts. By no stretch of imagination, it can be contended in the instant matter that the petitioners have acted willfully with an intent to evade the duty or they are guilty of misstatement or suppression of facts. The respondent authorities, by application of Exemption Notification have not computed the duty and permitted release of vessel and passed an 'out of charge' order. All the materials and the documents were before the officer. The vessel was examined by the team. In these circumstances, it cannot be contended that the petitioners have misstated or suppressed the material facts. In this context, it would be appropriate to refer para 31 of the Judgment in the matter of Hundai Steel Industries which reads thus:-

" 31. It is settled that, mere nonpayment of duties, even if any, cannot be treated and read for meaning "collusion" or "willful misstatement" or "suppress of facts". *M/S. Uniworth Textiles Ltd vs Commissioner of Central Excise, Raipur*.2. The Respondents have paid even the same, after due declaration. Therefore, in the present case, the Department /revenue failed to discharge its burden, as required under the law. There is no case made out of any "willful" or intent to evade duty to bring in the case of "fraud" and "collusion". There is no case of stated "misstatement" or "suppressing of fact". The impugned

order, therefore, needs no interference, even on the ground of stated delayed decision. All the questions of law, therefore, are required to be answered accordingly. ”

31 It is tried to be contended that since a grab was installed on the crane, there is a change brought about in the vessel. The argument is not acceptable for the reason that the customs authorities have examined this aspect and had also levied duty in respect of the grab and the lube oil etc.

32 It is tried to be contended that the Exemption Notification applies only in cases of re-import of goods exported under the claim of drawback or under bond category. The title of the Notification refers to the claim of drawback and the bond. Clause (1) Sr.No.1 of the Notification applies to goods exported under the claim of drawback on any customs or excise duty levied by the Union and the amount of duty to be levied is amount of drawback and the customs or excise duty allowed at the time of export. As far as clause Sr.No.3 is concerned, it does not refer to any drawback and is in itself a category not covered out by Sr.No.1, 2-A, 2-B and 2-C. Even otherwise, on perusal of the Bill of Entry for home consumption dated 5.2.2016, it records import details, wherein, there is a reference to Exemption Notification No.94/96 and the entry Sr.No.3. It does appear that the petitioners have claimed exemption under the Notification. The title of the statute or Notification, in itself cannot restrict or control the plain and clear meaning of the

words. In the matter of **M/s Frick India Limited versus Union of India and others reported in 1990 1 SCC 400**, in para No.8 of the Judgment, the Honourable Apex Court has observed thus:-

"8. It is well settled that the headings prefixed to sections or entries cannot control the plain words of the provision; they cannot also be referred to for the purpose of construing the provision when the words used in the provision are clear and unambiguous; nor can they be used for cutting down the plain meaning of the words in the provision. Only, in the case of ambiguity or doubt the heading or sub-heading may be referred to as an aid in construing the provision but even in such a case it could not be used for cutting down the wide application of the clear words used in the provision. Sub-item (3) so construed is wide in its application and all parts of refrigerating and air-conditioning appliances and machines whether they are covered or not covered under sub-items(1) and (2) would be clearly covered under that sub-item. Therefore, whether the manufacturer supplies the refrigerating or air-conditioning appliances as a complete unit or not is not relevant for the levy of duty on the parts specified in sub-item (3) of Item 29-A. "

33 The objection raised by the respondents, in this regard, therefore, does not deserve consideration.

34 For the reasons recorded above, the extreme action taken by the respondents of the seizure of vessel after lapse of about two years from the date of issuance of 'out of charge' order is arbitrary, firstly for the reason that :-

(a) The same is issued without observing the principles of natural justice and without extending proper opportunity of hearing to the petitioners.,

(b) There is absolutely no indication in the order that the proper officer had reason to believe that the goods are

liable for confiscation.

(c) The impugned act does not fall under any of the categories specified in clauses (a) to (p) of Section 111 of the Customs Act.

(d) The proper officer of the customs department had extended benefits of Exemption Notification and did not levy the duty and 'out of charge' order has been issued two years prior to taking of the action, which aspect has not been considered while issuing seizure memo.

It would be gainsaid that the vessel is the same which was exported and that has been re-imported by the petitioners. The Exemption Notification applies to the goods and the contention as regards the entity who has exported the goods not being the same which has re-imported, does not assume any significance.

35 Even otherwise, it was open for the respondents to invoke provisions of section 28 of the Act and to assess the duty which is claimed to have not been paid and on the face of availability of power under section 28 of the Act, the extreme action of seizure ought not to have been taken after lapse of two years from the date of issuance of 'out of charge' order and without recording anything in the seizure memo as regards the proper officer having possessed of the reasons to believe that the goods are liable for confiscation under the Act.

36 The respondent authorities are not prohibited from reassessing the custom duty and claim recovery.

37 During pendency of the petition, by way of an interim order passed on 16.11.2019, the petitioners were permitted to use FC Maria Laura for loading/export operation within the jurisdiction of respondent No.4. It was directed that the vessel shall not be moved beyond the jurisdiction of 4th respondent till further orders. A request is made in MCA No.971/2018 to permit the petitioners to take the vessel out of the jurisdiction of Goan water to Port Redi and to bring back the said floating crane within a period of 14 days from the date of passing of the order. This Court, by order dated 28.11.2018 permitted the petitioners to take the vessel out of territorial jurisdiction of Goan waters on furnishing bank guaranty of Rs.6 crore and it was further directed that the bank guaranty shall remain valid for a period of six months. The bank guaranty for sum of Rs.6 crore was directed to be furnished in view of para No.45 of the affidavit in reply presented on behalf of the respondents wherein, the respondents have recorded that, they would have no quarrel in release of the vessel if the petitioners are put to terms to furnish bank guarantee of minimum Rs.6 crore which is 50% of the liability after considering penalty and interest. The petitioners have furnished bank guaranty on 29.11.2018 for an amount of Rs.6 crore and the same would be valid up to 29.5.2019. The respondents have not yet passed any order in respect of

computation of duty and penalty, if any. It would be open for the respondents to continue with the proceedings as permissible in law for computation of duty and penalty, if any. The order impugned in this petition, issued by respondent No.3 dated 12.1.2018 is quashed and set aside. The petitioners are directed to keep alive the bank guaranty of Rs.6 crore furnished to this Court up to 29.5.2019. As has been stated above, the respondents shall have liberty to take appropriate proceeding as permissible in law in respect of computation of duty or penalty, if any, in observance of the procedure prescribed in that behalf and the order passed in the instant petition shall not be construed as an impediment in that regard.

38 Rule is accordingly made absolute in above terms.

39 There shall be no order as to costs.

40 In view of disposal of the instant writ petition, the pending civil application does not survive and stands disposed of.

(PRITHVIRAJ K. CHAVAN, J)

(R.M. BORDE, J)