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W.P.Nos. 19298 of 2012 etc

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2026

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER
KUMAR

W.P.Nos. 19298, 19299, 19300 & 19301 of 2012
and
M.P.Nos. 1,1,1,1 of 2012, 1 of 2014

The Great Eastern Shipping Company Ltd.,
a Company within the meaning of
Companies Act, 1956 and having its
registered office at Ocean House, 134/A,
Dr.Annie Besant Road, Worli,
Mumbai – 400 001
Rep. By its Company Secretary – Mr.Jayesh Trivedi

.. Petitioner
in all WPs

VS

- 1.Union of India,
Through Joint Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.
- 2.The Central Board of Excise and Customs,
North Block,
New Delhi – 110 001.
- 3.The Assistant Commissioner of Customs
(Group – 5A & 5B),
having his office at Customs House,



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No.60, Rajaji Salai,
Chennai – 600 001.

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.. Respondents
in all WPs

Prayer in W.P.No. 19298 of 2012 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the impugned demand letter bearing no.F.No:S Misc-60/2012-Gr.5A&5B dated 11th July 2012 issued by the 3rd respondent, and quash the same and forbear the respondents from charging any customs duty on the vessel 'Jag Rishi'.

Prayer in W.P.No. 19299 of 2012 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the impugned demand letter bearing no.F.No:S Misc-55/2012-Gr.5A&5B dated 11th July 2012 issued by the 3rd respondent, and quash the same and forbear the respondents from charging any customs duty on the vessel 'Jag Rahul'.

Prayer in W.P.No. 19300 of 2012 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration to declare that condition no.82 of S.No.462 of Notification no.12/2012 Cus. Dated 17.03.2012 issued by the 1st respondent, is illegal and unconstitutional as being violative of section(s) 12,25 and 46 of the Customs Act, 1962 and Articles 14,19(1)(g),265 and 300A of the Constitution of India, insofar as the petitioner is concerned.

Prayer in W.P.No. 19301 of 2012 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of prohibition prohibiting the respondent no.3 from demanding any customs duty on the vessels 'Jag Rahul' and 'Jag Rishi' which have been imported into India prior to 17.03.2012 i.e., the date of coming into force of Notification 12/2012-Cus.

For Petitioner : Mr.Karthik Sundaram
(in all writ petitions)

For Respondents : Mr.S.Gurumoorthy
SPC
(in all writ petitions)



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COMMON ORDER
(Made by Dr. ANITA SUMANTH.,J)

Mr. Karthik, learned counsel, makes an endorsement not pressing the relief sought in W.P.No. 19300 of 2012, recording which, W.P.No.19300 of 2012 is dismissed as not pressed, leaving the question to be decided in any other appropriate case.

2. Now coming to W.P.Nos. 19298 & 19299 of 2012, the relief sought for is a certiorarified mandamus challenging communication dated 11.07.2012 in respect of two vessels i.e., 'Jug Rahul' and 'Jug Rishi' for non-payment of countervailing duty (CVD) on conversion from foreign to coastal run.

3.The impugned communications refer primarily, to Notification No. 12/2012 where Serial No. 462 stipulates that goods under tariff heading 8901 (foreign going vessels), are exempt from basic customs duty (BCD) and CVD, subject to the condition that appropriate duty is remitted upon conversion to coastal run.

4. 'Jug Rahul' has been imported in 2005. No Bill of Entry has been filed as the law did not mandate the filing of Bill of Entry at that relevant point in time. As far as 'Jug Rishi' is concerned, Bill of Entry has been filed on 28.03.2011. Both imports are prior to date of Notification dated 12/2012.



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5. The petitioner relies on a decision of the Orissa High Court in its own case *Great Eastern Shipping Company Ltd and Ors v Union of India and Ors*¹. The challenge is identical in that case as well and relates to three other vessels being 'Jug Arnav', 'Jag Ratan' and 'Jag Rani', that had been imported on 30.04.2003, 13.11.2007 and 26.08.2011, respectively. The Court proceeds on the basis that Notification No. 12/2012 would not adversely impact those imports that had taken place prior to date of Notification being 17.03.2012 as the applicability of the Notification is prospective.

6. The admitted position in the present case is that, post date of Notification there has been conversion from foreign run to coastal run. However, one of the question that has been taken note of by the Orissa High Court referring to *Commissioner of Customs, Mumbai v Aban Loyd Chiles Offshore Ltd*² is that customs duty would be leviable only on the import of conveyances at the first instance (i.e., at the time of first entry). This event was in 2005 and 2011 in the case of the two vessels we are concerned with. Post the aforesaid event, they ceased to be goods and were only conveyances. The Supreme Court in *Aban*³ has explained this in the following terms:-

¹ 379 ELT 318(Ori) : W.P(C) No. 4 of 2013

² (2017) 3 SCC 211

³ Foot Note supra 2



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

7. Hence the critical event in order to attract liability under Notification No.12/2012 would be the date of import alone and not their subsequent run as a conveyance. In the present case, these critical dates are in 2005 and 2011, even prior to date of Notification.

8. The decision of the Orissa High Court has attained finality and the operative portion reads as follows:-

‘Discussion and Reasons

21. The above submissions have been considered. Since the central plank of the submission of the Opposite Parties to justify the insistence on payment of customs duty on the vessel in question at the time of its conversion from foreign going vessel to coastal run vessel. Notwithstanding that it was imported which was in fact imported way back on 13th April, 2003, no customs duty was payable thereon and in support thereof reliance has been placed on the Notification 16/2012-Cus dated 13th June, 2012, the Court proposed to legally by examining that circular in some due date. The subject matter of the said circular issued by the CBEC “procedure followed for import of Indian vessels and filing of import general manifest, bill of entry-regarding”.



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22. *The circular explains in detailed that the context in which it is being issued since the difficulties was brought to the notice of the CBEC by the INSA stating that the customs field formations are insisting on filing of Import General Manifest (IGM) and BOE “even in respect of those vessels that were imported in the past and which were exempt from payment of import duty.” The circular then proceeds to examine the various categories of vessels imported into India. These includes:*

- “(1) Foreign flag vessels, i.e. vessels that have been registered outside India and which carry imported/exported goods or passengers, during its foreign run (voyage from a port outside India to an Indian port, whether touching any intermediate port in India or not;*
- (ii) Vessel entering India for the first time on arrival in the country, for registration as Indian Flag vessel;*
- (iii) Vessels which are intended for conversion from foreign run to coastal run/trade (voyage between two or more Indian ports); and*
- (iv) Vessels which are brought into India for breaking up.”*

23. *Specific to the present context paragraph-3.4 of the Circular notes in respect of vessels for conversion to coastal run read as under:*

“3.4 Vessels for conversion into coastal run: Any vessel could be used for coastal run/trade after obtaining requisite clearance from Director General of Shipping and on fulfillment of certain specified conditions under Section 407 of the Merchant Shipping Act, 1958. In case of foreign going vessel, exemption from import duties, including CVD, have been extended vide Serial No.462 of Notification No.12/2012-Cus. Dated 17-3-2012, subject to prescribed conditions, which binds the importer to file fresh Bill of Entry at the time of its conversion for coastal run/trade and payment of applicable duty on such conversion of



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vessel for coastal run/trade. Similarly, excise duty is also payable on vessels which are being used for coastal trade vide serial No.306 of Notification No.12/2012-Cus. Dated 17-3-2012. Hence, if any Indian Flag vessel which is used for time being as foreign going vessel is converted for use in coastal trade or any vessel which is to be used for coastal trade, there is a need to file a Bill of Entry for payment of applicable duty as CVD.”

24. Clarifications, relevant to the case on hand, have been issued in paragraphs-4, 5 and 6 as under:

“4. In view of the above, it is clarified that in respect of foreign flag vessels, for Indian flag vessels, there is no requirement of filing of IGM and Bill of Entry, since its usage is as conveyance. In respect of Indian flag vessels and vessels for breaking up as explained in para 3.3 and 3.5 above, the importer has to file IGM and Bill of Entry, under the provisions of the Customs Act, 1962. As regards the vessel for conversion into coastal run/trade as detailed in para 3.4, since the changes in the duty structure for levy of CVD on vessels which are being converted for coastal trade was initially imposed from 1-3-2011, and subsequently retrospective exemption has been provided for the period 1-3-2011 to 16-3-2011 vide clause 129 of the Finance Act, 2012, the requirement for filing IGM and Bill of Entry may be insisted in all such cases w.e.f. 17-3-2012, that is the date from which levy of CVD has come into force.

5. It is also clarified that all vessels including foreign going vessels for its entry into/exit from the country during its journey as foreign going vessel and the Indian flag vessel/Indian Ship for subsequent use as foreign going vessel would not require filing of IGM and Bill of Entry as conveyance, since the same are not imported goods to be cleared for home consumption.

6. Accordingly, the field formations may adjudicate



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the cases involving any violation where the IGM or Bill of Entry in respect of vessels were not filed at the time of import, on its first arrival in India or on its conversion into coastal trade and appropriate penal action be taken against the offenders.”

25. *A careful reading of the above circular reveals that it does not support the contention of Opposite Parties that in the present case where the vessel ‘Jag Arnav’ has been imported into India way back on 30th April, 2003, the Opposite Parties can insist on collection of CVD at the time of its conversion from a foreign going vessel into a coastal run vessel.*

26. *This contention also overlooks the settled legal position, which the circular in fact makes abundantly clear, that Notification No.21/2012 dated 17th March, 2012 was not intended to operate retrospectively. In other words, it was not intended to apply to a vessel already been imported into India long before the date of said exemption notification.*

27. *The decisions of the Bombay High Court in **Great Offshore Limited v. Commissioner of Customs (Import) and SEAMEC Ltd. v. Union of India** (supra) also make this position clear. Both the decisions hold that where the vessels had been imported long before the notification that was sought to be applied in those cases, and particularly at a time when there was no requirement to file a BOE, the Opposite Parties could not insist on levy of customs duty at a later stage.*

28. *Turning to the Entries 461 and 462 and the corresponding Conditions 81 and 82, it requires to be noted that Condition 81 applies when a imported ship is subsequently broken up and sold. In such event the date of import is by a deeming fiction postponed to the date of breaking up of the ship. In any event, in the present case Condition 81 does not apply since here there was no question of the ship ‘Jag Arnav’ being broken up at any stage.*



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29. Interestingly it is not in dispute that the 'Jag Arnav' has, after its import into India, undertaken several journeys both to ports out outside India as also those within India. It is only after the impugned notification that permission for conversion into a coastal run vessel was sought by the Petitioner. However, that by itself would not attract the liability to pay customs duty on the entire value of the vessel since the import took place much earlier on 30th April, 2003 at which point in time it was fully exempted from payment of any customs duty.

30. Mr. Shah has rightly his contention that a distinction has to be made between levy and customs duty on the value of ship stores that is carried on the vessel and are by themselves 'goods'. He points out how Petitioner No.1 has in fact paid customs duty on the value of ship stores without delay.

31. To complete the factual narration, after the interim order of this Court dated 11th January, 2013 a provisional BOE was filed by Petitioner No.1 on 15th January, 2013 and it was provisionally assessed on 10th February, 2013. 'Jag Arnav' re-converted to foreign status at Mundra on 1st February, 2013 and to coastal run status at Paradeep on 10th February, 2013. Provisional BOE was filed on 15th February, 2013 and provisional assessment took place. On 9th March, 2013 it reconverted to foreign status at Mundra.

32. Mr. Shah points out how 'Jag Arnav' was in foreign status at the time of import and thereafter for nearly ten years. It converted to coastal run status for the first time at Dhamra on 6th January, 2013. It had called on Indian ports on various occasions in 2003, 2008 and 2009.

33. A similar list of dates have been filed for the two other vessels, i.e., 'Jag Ratan' and 'Jag Rani' both of which arrived at Indian port, i.e., Paradeep for the first time on 13th November, 2007 and 26th August, 2011 respectively. Both these vessels have been converted several times from coastal run status to foreign going status depending on the



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journeys undertaken. On 2nd March, 2013, 'Jag Ratan' reverted to foreign status at Dhamra and 'Jag Rani' on 7th January, 2013.

*34. It requires to be noted at this stage that Petitioner No.1 has filed writ petitions both in High Courts of Gujarat and Madras for similar reliefs. In the decision of the High Court of Andhra Pradesh and Telengana **Great Eastern Shipping Company v. Deputy Commssioner** (supra), one of the questions that was addressed the next question is as to whether the customs authorities are entitled to assess the imported vessel to duty, on the premise that the bill of entry is filed in the year 2018, and also collect duties and tax prevalent in 2018 despite the fact that the vessel was admittedly imported into the Indian waters on 28th May, 2012 more particularly when the customs duty applicable at that point of time was 'nil'.*

*35. After discussing the applicable law and particular the decisions in **SEAMEC Limited** (supra), the conclusion reads as under:*

“In our considered view, whether the bill of entry has been presented before the date of entry or after the date of entry, the bill of entry shall be deemed to have been presented on the date of actual entry inwards and the said date of entry shall bereckoned as the relevant date for application of the law prevalent as on that date.

.....

To sum up, we are of the view that the law prevalent as on the date of the import of the vessel in the case on hand would only be applicable and that merely because the bill of entry was not filed at the inception in the year 2012 and the manual bill of entry was filed in the year 2018, that is, about six years after the actual import of goods, the duty and tax cannot be levied based on the law prevalent on the date of the filing of manual bill of entry more particularly as the import of the vessel in May,



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2012, is not in dispute and as the vessel ran after getting necessary port clearances on number of occasions is also not in dispute. As admittedly the duties were 'nil' at the time of import in May, 2012, and the integrated tax in terms of Section 3(7) of Customs Tariff Act, 1975 was introduced w.e.f. from 01.07.2017, we hold that the petitioner is entitled to the reliefs claimed in the writ petition."

36. This Court respectfully concurs the above view and holds that in the present case since vessel 'Jag Arnav' called in Indian port for the first time at Paradeep on 30th April, 2003, and at that relevant date it was exempt from payment of customs duty it cannot be made amenable to such duty nine years later by virtue of a condition in another exemption notification of March 2012.

37. One of the contentions of the Opposite Parties is that after the Notification dated 17th March 2012 was issued, customs duty is leviable on every occasion when the vessels in question entered India as a 'conveyance' carrying cargo. In relation to Indian flagged vessels, as the three in question in this case, at the time of their first entry into Indian waters they are considered as imported 'goods'. Thereafter every time they re-enter these vessels conduct their activity as 'conveyance' as defined under Section 2 (9) of the Act. Such conveyances are not re-imported into India every time they enter Indian waters since they were never 'exported' from India. Section 20 of the Act would, therefore, have no applicability. Only their cargo would be amenable to customs duty, if at all. This position has been explained in **Commissioner of Customs, Mumbai v. Aban Loyd Chiles Offshore Ltd. (2017) 3 SCC 211** as under:

"13. To appreciate the controversy, it is necessary to understand certain concepts as envisaged under the Act. 'Goods' for the purpose of the Act includes vessels, aircrafts and vehicles as defined in sub-section (22) to Section 2, yet the distinction has to be recognized between a vessel or an aircraft as a



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mere good and when the vessel or an aircraft comes to India as a conveyance carrying imported goods. When a vessel or an aircraft is imported into India as a good, customs duty is payable thereon. However, when a vessel is used as a conveyance of an imported good, the position would be different.

38. *It has already been noticed how Circular No.16/2012 dated 13th June, 2012 does not support the case of the Opposite Parties. They have also relied on the decision of **Jalyan Udyog v. Union of India** (supra). That decision is not applicable to the present case as it seeks to interpret Entry No.461 read with Condition 81, which is not relevant in the facts and circumstances of the present case. On the other hand, the language of Condition 82 makes it clear that it is meant to apply to vessels imported after the date of the notification and not prior thereto.*

39. *Lastly the submission of Mr. Shah that an exemption of notification cannot create a levy outside the charging section finds full support from the decision of the High Court of Gujarat dated 15th July, 2015 in Special Civil Application No.3142 of 2010 (**Adani Power Limited v. Union of India**). This was affirmed by the Supreme Court of India by the dismissal of SLP (Civil) No.30868 of 2015 of Union of India against the said decision, on 28th November, 2015.*

40. *For the aforementioned reasons, this Court concludes that in the present case exemption notification dated 17th March, 2012 is only prospective in its application and that in respect of the import of the three vessels i.e. 'Jag Arnav', 'Jag Ratan' and 'Jag Rani' which were imported into India first on 30th April 2003, 13th November, 2007 and 26th August, 2011 respectively, Entry 462 read with Condition No.82 of the notification dated 17th March, 2012 will not apply.*

41. *As a result, it is not necessary for this Court to strike down the said entry or condition of the notification. It is held that the Opposite Parties would not be justified in*



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insisting on payment of CVD by Petitioner No.1 for grant of conversion of the vessels from foreign going to coastal run since the vessels stand imported prior to the notification dated 17th March, 2012.

42. In that view of the matter, the sum of Rs.5,00,000/- (rupees lakh) deposited by Petitioner to this Court together with the interest accrued thereon will be released in favour of Petitioner No.1 by the Registry within four weeks.

43. The writ petition is allowed in the above terms. But in the circumstances, with no order as to costs.'

9. The above decision has been accepted by the Revenue and no appeal has been filed and the ratio is hence applicable to the present matter as well. We are hence of the considered view that the impugned demands under communications dated 11.07.2012 are liable to be quashed.

10. Mr.Gurumoorthy would attempt to point out that the impugned communications are only advisory in nature, intending to put the petitioner to notice of an impending show cause notice. We disagree, as in paragraph 7 of the impugned communications, this is what the respondent states:-

7. Hence you are requested to file Bill of Entry for the payment of CVD for the period of licence to run as Coastal vessel as given in the working sheet attached herewith, within 14 days from the date of receipt of this letter. The rate of exchange given in the working sheet is for illustration only, as the actual rate of exchange on the date of filing Bill of Entry will be taken for the assessment.



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11. The very fact that there is a computation / working sheet annexed with the impugned communication quantifying the demand and calling for the remittance of the same within 14 days from date of receipt of the letter, would make the impugned communication nothing short of a demand and, they are quashed. In light of the above discussion, W.P.Nos. 19298 & 19299 of 2012 are allowed.

12. As a sequitur, W.P.No. 19301 of 2012 seeking a writ of prohibition in demanding customs duty on the import of 'Jag Rahul' and 'Jug Rishi' is also allowed.

13. There shall be no order as to costs. Connected miscellaneous petitions are closed.

[A.S.M, J.] [M.S.K, J.]
05.01.2026

Index:Yes
Neutral Citation:Yes
ssm



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To

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Ministry of Finance,
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