

CHOWGULE & CO. PRIVATE LIMITED ETC.

v.

UNION OF INDIA & ORS.

FEBRUARY 19, 1987

[O. CHINNAPPA REDDY AND S. NATARAJAN, JJ.]

Customs Act, 1962—Sections 12, 15(c) and 46—‘Vessel’ whether ‘goods’—‘Goods for home consumption’—Determination of for purposes of levy of customs duty—‘Vessels’ brought to India for topping up operations in Mormugao harbour—Whether ocean going vessels—Necessary to present Bill of Entry.

‘Vessel’—‘Goods for home consumption’—Meaning of.

The appellants in Civil Appeal No. 179 of 1985 carry on business of exporting iron ore to various countries. Previously iron ore used to be brought to the harbour from various mines by barges and unloaded in the harbour. Thereafter, the iron ore could be loaded on board ocean going ore carriers. Alternately, they could be directly unloaded in stream into the ocean going ore carriers. Shallow draught of the harbour prevented large ocean going ore carrying vessels from entering the harbour or from having iron ore loaded to full capacity on such vessels within the harbour and considerable time was wasted in the loading process resulting in substantial increase of the transporting cost. The appellant Company, therefore, conceived the idea of acquiring a “Transhipper” into which barges could unload iron ore and from which large quantities thereof could be loaded into large vessels in open anchorages, a process described as “topping up”. The appellant Company after obtaining necessary permission from the Government of India for purchasing a second hand vessel for use as a topping up vessel at Mormugao harbour for iron ore exports, acquired a second hand tanker, had it converted as a transhipper and obtained “A certificate of Condition.” On the arrival of the vessel in the harbour the Deputy Conservator of the harbour was informed that “this is an old 72 Tanker converted and equipped to do the work of topping up of the bulk carriers after they are loaded at the mechanic plant to the permissible draught.” The appellant Company then applied to the Government of India for the issue of “General Licence” under s.406 of the Merchant Shipping Act, 1958 stating that the general licence was sought to ply the vessel ‘for topping purposes in stream at Mormugao harbour’. Licence was granted by the Government of India “(a) for topping up purposes in stream at any Indian port; (b)

A for trading on coast; and (c) for a period of 5 years from March 5, 1970 to March 4, 1975". The appellant Company also informed the Assistant Collector of Customs about the acquisition of the vessel 'Maratha Transhipper' for *"the purpose of uptopping large size bulk carrier in stream"* stating that they would be operating the ship within the port limits, that she would serve as a sea barge, that normally she would take cargo
B coming by barges with the help of her own equipment and storing in her own hatches and thereafter she would go along side bulk carriers and transfer the ore from her holds into the bulk carriers. Subsequently, it was also informed that transhipper was registered as a "home trade vessel" and it was capable of three types of operations namely, (a) load herself in stream in river barges; (b) up-top another vessel by using the cargo from her own hatches; and (c) up-top another vessel by using the
C cargo from barges which go along side Maratha Transhipper. Thus, "the Maratha Transhipper" possessed all the certificates prescribed by the Merchant Shipping Act and other Maritime Laws to enable her to ply the oceans.

D The Assistant Collector of Customs asked the appellant Company to file a Bill of Entry for stores on board the vessel and for clearance of the vessel for home consumption. On query being made by the appellant Company as to under what provisions of the law they were required to file the Bill of Entry, the Assistant Collector replied stating: "the function of the vessel 'S.S. Maratha Transhipper' is in the nature of sea barge
E operating within the port limits. Such operations are reserved to the vessels imported for home consumption." The Assistant Collector of Customs issued a notice to the appellant Company to show cause why the Bill of Entry was not filed. After the reply to the notice was sent and a personal hearing was granted to the Company, the Assistant Collector made an order requiring the company to file a Bill of Entry for home
F consumption. This order was confirmed by the Appellate Collector. The orders of the Assistant Collector and the Appellate Collector were questioned in a writ petition. A Single Judge allowed the petition but on appeal a Division Bench set aside the order of the Single Judge and dismissed the petition holding that a vessel was 'goods' within the meaning of s.46 of the Customs Act.

G The vessel in C.A. No. 4427 of 1985 was an ocean going merchant vessel engaged in foreign and coastal trade in India and various foreign countries. The appellant acquired the vessel from the previous owner and obtained the permission of the Government to have it converted as a Transhipper. After the vessel arrived at Mormugao Port, the Customs
H Authorities demanded that a Bill of Entry should be filed. Thereafter the

same story followed as in the other case.

In the appeal to this Court on behalf of the appellant it was contended: (1) that the scheme of the Customs Act show that a vessel was not 'goods' within the meaning of s.46(1) of the Act and therefore, it was not necessary to file a Bill of Entry; (2) that it was also the case of the Government of India that an ocean going vessel was not required to file a Bill of Entry and that the vessels in question were ocean going vessels notwithstanding that their main purpose was topping up bulk carriers; (3) that the Division Bench was wrong in refusing to go into the question whether or not the vessels were ocean going vessels when that was the very basis of the orders of the Customs Authorities as well as the judgment of the Single Judge, and (4) that notwithstanding the definition, the scheme of Chapters VI and VII of the Customs Act and the context in which the expression 'goods' is used in s.46 of the Act require the expression to be interpreted for the purpose of s.46(1) as excluding the vessel, aircrafts or vehicles.

On behalf of the respondent Union, it was contended that the definition of the word 'goods' in the Customs Act unambiguously included a vessel, and that in any case the vessels in question in both the cases were Transhippers used for topping up operations in Indian territorial waters and could not claim to be classified as ocean going vessels.

Dismissing the appeals,

HELD: 1. Section 46(1) of the Customs Act, 1962 require the importer of goods for home consumption or warehousing to present to the appropriate officer a Bill of Entry in the prescribed manner. The question is whether the vessels in the instant cases are goods brought into India for home consumption and whether a transhipper is an ocean going vessel? By definition a vessel, aircraft or vehicle is included among goods vide s.2(22). [364E-G]

2. If a vessel, aircraft and vehicle are required to be excluded from the meaning of the expression 'goods' in s.46(1), then what other purpose was to be served by the inclusive definition of the expression which expressly brought within its shadow 'vessel, aircraft and vehicle'. There is no provision in the Act into which the inclusive definition could be read. The Court cannot attribute redundance to the legislature particularly in the case of a definition in a taxing statute. The Court must proceed on the basis that such a definition is designed to achieve results. [364H; 365A-B]

A 3. Under s.12 of the Customs Act what are dutiable are goods
imported into or exported from India and if goods are defined to include
vessels, aircrafts and vehicles, it must be taken that the object of the
inclusive definition was to bring within the net of taxation vessels,
aircrafts and vehicles which are imported into India. Section 46(1) is a
prelude to the levy of duty or a first step in that direction. It must,
B therefore, follow as a necessary sequitur that vessels, aircrafts and vehi-
cles are 'goods' for the purpose of s.46(1). Any other interpretation may
lead to most anomalous results. [365B-C]

C 4. Under s.15 of the Act the rate of duty and tariff valuation in the
case of goods entered for home consumption under s.46 shall be as on the
date when the Bill of Entry is presented, in the case of goods cleared from
a warehouse under s.68 as on the date on which the goods are actually
removed from the warehouse and in the case of any other goods as on the
date of payment of duty. [365D-E]

D 5. Goods which are entered for home consumption under s.46 and
goods which are warehoused are naturally goods which are openly im-
ported into India without concealment. The expression 'other goods'
mentioned in s.15(c) is obviously meant to cover other imported goods
such as goods imported clandestinely and goods which have otherwise
escaped duty. [365E]

E 6. It may be that in s.46(2) and elsewhere the word 'goods' is used
in such a way as not to include and as contradistinguished from the
conveyances in which the goods are carried, depending upon the context.
But that does not mean that despite the definition, the word is never to be
understood as defined and that it should always be interpreted as never to
include vessels, aircrafts and vehicles even when there is nothing in the
F context justifying from exclusion. Therefore, there is no justification for
holding that a vessel is not 'goods' for the purposes of s.46(1). [366B-D]

G 7. In both the instant cases, undoubtedly the vessels are not only
capable of being used but are used as cargo ships to carry cargo from one
Indian port to another or sometimes to foreign ports, necessarily going
out on the high seas. They are structurally and technically competent to
go on the high seas and they have been certified to be so competent by
appropriate maritime authorities. When because of inclement monsoon
weather topping up operations cannot be done the vessels do go out into
the open sea sometimes from one Indian port to another and at other
times to foreign ports. Even in the course of topping up operations during
H the fair season, the transhippers go into the open sea to reach the bulk

carriers. But these operations do not make these vessels ocean going vessels when their primary purpose is to conduct topping up operations in Indian territorial waters. [366F-H; 367A-B]

8. It is clear from the material placed before the Court that both the vessels, were originally ocean going vessels, that they were converted as transhippers for the purpose of topping up iron ore at Mormugao harbour and that they traversed the open sea to reach Mormugao. At the time they entered the territorial waters at Mormugao it was distinctly understood and intended that the vessels were to be primarily used for topping up operations at Mormugao. If ocean journeys were to be undertaken either they were incidental to the primary purpose of topping up bulk carriers at Mormugao or they were occasionally undertaken when topping up operations were not possible during the inclement monsoon season. [367D-F]

9. For the purpose of levy of Customs Duty, in order to determine whether any imported goods are 'goods for home consumption' it has to be found out what the primary intended use of the goods was when the goods are brought to Indian territorial waters. If the goods are intended to be primarily used in India they are "goods for home consumption" notwithstanding that they may also be used for the same or other purposes outside India. The vessels, in these two cases were brought to India to be used primarily as transhippers at Mormugao, though used incidentally or occasionally to go into the open sea. They are, therefore, "goods for home consumption" and not ocean going vessels for the purpose of Customs Act. After their conversion they were no longer ocean going vessels, in the full sense of the term that is in the sense that their predominant purpose was use as ships traversing open seas. It was, therefore, necessary to present Bills of Entry in respect of both the vessels. [367G-H; 368A-C]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 179 of 1985.

From the Judgment and Order dated 13.12.1984 of the Bombay High Court in Appeal No. 273 of 1979.

WITH

Civil Appeal No. 4427 of 1985.

From the Judgment and Order dated 19.4.1985 of the Bombay

A High Court in Special Civil Appln. (Writ Petition) No. 186 of 1982.

A. Setalvad, P.H. Parekh, M. Korde and Manohar for the Appellants in C.A. No. 179 of 1985.

B. Soli J. Sorabjee, A. Vachher, S.K. Mehta, Bomi M. Usgaocar, M.K. Dua and Uday U. Lalit for the Appellants in C.A. No. 4427 of 1985.

M.S. Rao, A.S. Rao, C.V. Subba Rao and P. Parmeshwaran for the Respondents.

The Judgment of the Court was delivered by

C **CHINNAPPA REDDY, J.** The principal questions raised in the two appeals are the same and we are, therefore, disposing of both the appeals by a common judgment. There are, however, some points of difference which we shall mention in the course of the narration of facts.

D In Civil Appeal No. 179 of 1985, Chowgule & Co. Private Limited are the appellants. They carry on the business of exporting iron ore to various countries from India. It appears that previously iron ore used to be brought to the Mormugao harbour from various mines in the territory of Goa by barges and unloaded in the harbour. Thereafter, the ore would be loaded on board ocean going ore carriers. Alternately, they would be directly unloaded in stream into the ocean going ore carriers. On account of the shallow draught of the Mormugao harbour which prevented large ocean going ore carrying vessels from entering the harbour or from having iron ore loaded to full capacity on such vessels within the harbour, considerable time was wasted in the loading process resulting in substantial increase of the cost of transporting iron ore from Mormugao. Therefore, in about 1967, the appellant company conceived the idea of acquiring a 'transhipper' into which barges could unload iron ore and from which large quantities of iron ore could be loaded into large vessels in open anchorages. Such a transhipper would have to be specially fitted with special and adequate equipment to carry out those tasks. The operation of loading a vessel in open anchorage by the use of transhippers is described as 'topping up'. On July 26, 1967, the appellant Company applied to the Government of India, Ministry of Transport and Shipping, for necessary permission for "purchasing a second hand vessel of about 15000 DWT for use as a topping up vessel at Mormugao harbour for iron ore exports." By their letter dated January 16, 1968, the Government of India granted their permission subject to certain con-

ditions regarding foreign exchange etc. Thereafter the appellant company acquired a second hand tanker called "The Tropical Grace" and had it converted at the Yokohoma Shipyard in Japan as a transhipper. "A certificate of Condition" in respect of the vessel was given by BUREAU VERITAS. Among the main characteristics of the vessel, it was mentioned in the certificate, "The Vessel originally a T 2 Tanker was converted into an ore loading barge at Yokohoma by Nippon, KK, Asano Dockyard from April to September 1969 under the supervision of our society." It was further certified as follows:

"The vessel will be entered into the Marine Register Book of BUREAU VERITAS with the following class and notation mark: 1 3 3 *Ore Carrier, Small Coasting Trade* starting from September 1969, for a period of four years. The vessel will be mainly employed as an ore loading barge in the Harbour of Goa (India), with the possibility to extend her exploitation in certain periods of year, as a bulk carrier for small coasting trade.

As a result of the aforesaid surveys for conversion and reclassification, the undersigned believes that S/S "TROPICAL GRACE" is at present time in a position to undertake the self-propelled voyage from YOKOHOMA to GOA."

The vessel arrived in the harbour of Mormugao on or about October 15, 1969. The Deputy Conservator, Mormugao Goa Port Trust, Mormugao harbour was informed on the same day about the arrival of the vessel and it was stated in the letter, "this is an old 72 Tanker converted and equipped to do the work of topping up of the bulk carriers, after they are loaded at the mechanic plant to the permissible draught." On October 20, 1969, the petitioner company applied to the Government of India for the issue of 'General Licence' under s.406 of the Merchant Shipping Act, 1958. It was stated that the general licence was sought to ply the vessel 'for topping purpose in stream at Mormugao harbour'. The name of the ship was also changed to 'Maratha Transhipper'. Licence was granted by the Government of India for use of the vessel for "topping up purposes in stream at Mormugao, Kandla, Bombay and Madras for a period of five years". It appears that this licence was later amended and the purposes for which the licence was granted was treated as "(a) for topping up purposes in stream at any Indian Port; (b) for trading on coast; and (c) for a period of five years from March 5, 1970 to March 4, 1975." On

A November 29, 1969, the petitioner company informed the Assistant Collector of Customs, Custom House, Mormugao harbour about the acquisition of the vessel Maratha Transhipper (earlier Tropical Grace) for "*the purpose of up-topping large size bulk carrier in stream*". It was stated that they would be operating the ship within the port limits and that she would serve as a sea barge. It was also stated that normally she

B would take cargo coming by barges with the help of her own equipment and storing in her own hatches to the extent of 15000 tonnes and thereafter she would go alongside bulk carriers and transfer the ore from her holds into the bulk carriers. This letter was followed by another letter dated November 29, 1969 in which it was stated that S.S. Maratha Transhipper was registered as a "*home trade vessel*" and that it was capable of three types of operations:-

- C
- (a) load herself in stream in river barges
 - (b) up top another vessel by using the cargo from her own hatches; (c) up-top another vessel by using the cargo
- D from barges which go alongside Maratha Transhipper.

We may also add here that 'The Maratha Transhipper' possesses all the certificates prescribed by the Merchant Shipping Act and other Maritime Laws to enable her to ply the oceans.

E On December 31, 1969, the Assistant Collector of Customs, Mormugao asked the appellant company to file a Bill of Entry for stores on board the vessel, 'Maratha Transhipper'. This was followed on February 6, 1970 by another letter from the Assistant Collector asking the appellant company to file a Bill of Entry for clearance of the vessel 'Maratha Transhipper' for home consumption immediately. The

F appellant company by their letter dated February 19, 1970 requested the Assistant Collector to enlighten them as to the relevant provisions of the law under which they were required to fill in the Bill of Entry in respect of the vessel which they said the Customs Department was aware was an ocean going vessel. The Assistant Collector replied stating, "The function of the vessel s.s. 'Maratha Transhipper' is in the

G nature of a sea barge operating within the port limits. Such operations are reserved to the vessels imported for home consumption." The company was requested to file the Bill of Entry for home consumption immediately. Thereafter there was some correspondence between the company and the Customs. On April 23, 1970, the Assistant Collector of Customs issued a notice to the appellant company asking them to

H show cause why the Bill of Entry was not filed in respect of the vessel

s.s. 'Maratha Transhipper' which was imported by the company on October 15, 1969 for the purpose of carrying out topping operations within the port limits. The company sent a reply to the notice. A personal hearing was also granted to the company. Thereafter on May 22, 1970, the Assistant Collector made an order requiring the company to file a Bill of Entry for home consumption in respect of the vessel 'The Maratha Transhipper'. The order of the Assistant Collector was confirmed by the Appellate Collector on July 23, 1970. The Orders of the Assistant Collector and the Appellate Collector were questioned in a writ petition filed in the High Court of Bombay. A learned single judge of the High Court allowed the writ petition but on an appeal under the Latter Patent a Division Bench of the High Court holding that a vessel was goods within the meaning of s.46 of the Customs Act, allowed the appeal and dismissed the writ petition. The company having obtained special leave of this court under Art. 136 of the Constitution, the appeal is now before us.

The facts in Civil Appeal No. 4427 of 1985 are some what different. The vessel in question in this appeal, "Priyamvada" was originally called 'Jagatswamini'. Jagatswamini was an ocean going merchant vessel engaged in foreign and coastal trade in India, the United Kingdom, the continent, Japan, North America, South America and Australia. V.S. Dempo & Co. Private Limited, the appellant in Civil Appeal No. 4427 of 1985 acquired the vessel from its previous owner M/s. Dempo Steamship Limited. The appellant company obtained the permission of the Government to have it converted as a transhipper. The conversion was effected by M/s. A.G. Weser at a West German Shipyard. The ship was fitted with added holds on both sides, cranes, conveyors and ship loading equipments designed for transfer operations. The vessel was surveyed by Germanischer Lloyd and German Maritime. International tonnage certificate, Suez Canal Tonnage certificate, cargo ship safety certificate, cargo ship safety equipment certificate, international load lines certificate and classification certificate were all issued. The vessel arrived at Mormugao Port on September 26, 1982. The Customs Authorities demanded that a Bill of Entry should be filed. Thereafter the same story followed as in the other case.

The main submissions of Shri Atul Setalvad, the learned counsel for the appellant in Civil Appeal No. 179 of 1985, whose arguments were supplemented by Shri Soli Sorabjee, learned counsel for the appellant in Civil Appeal No. 4427 of 1985, were that the scheme of the Customs Act show that a vessel was not 'goods' within the meaning of

- A s.46(1) of the Customs Act and therefore, it was not necessary to file a Bill of Entry, that it was also the case of the Government of India that an ocean going vessel was not required to file a Bill of Entry and that the vessel in question was an ocean going vessel notwithstanding that its main purpose was topping up bulk carriers of Iron ore. It was submitted that the Division Bench of the High Court was wrong in
- B refusing to go into the question whether or not the vessel was an ocean going vessel when that was the very basis of the orders of the Customs Authorities as well as the judgment of the learned single judge. On the other hand, it was submitted by Shri S.Madhusudan Rao, learned counsel for the Union of India that the definition of the word 'goods' in the Customs Act unambiguously included a vessel, leaving no scope
- C for any argument and that, in any case the vessels in question in both the cases were principally transhippers used for topping up operations in Indian territorial waters and could not claim to be classified as ocean going vessels.

We may now refer to the relevant provisions of the Customs Act.

- D Section 2(22) of the Customs Act defines that unless the context otherwise requires, "goods" includes—"(a) vessels, air-crafts and vehicles; (b) stores; (c) baggage; (d) currency and negotiable instruments; and (e) any other kind of moveable property". "Import" is defined as meaning "bringing into India from a place outside India". "India" is defined as including "the territorial waters of India".
- E "Imported goods" are defined to mean "any goods brought into India from a place outside India but not including goods which have been cleared for home consumption". "Importer" is defined, "in relation to any goods at any time between their importation and the time when they are cleared for home consumption" as "including the owner or any person holding himself out to be the importer". "Conveyance" is
- F defined to include "a vessel, an aircraft and a vehicle". "Bill of Entry" is defined to mean a "Bill of Entry referred to in s.46". A "Bill of Export" is defined to mean a "Bill of Export referred to in s.50." An "Import Manifest or Import Report" is defined to mean "the manifest or report required to be delivered under s.30". "Stores" are defined to mean "goods for use in a vessel or aircraft and includes fuel and
- G spare parts and other articles of equipment whether or not for immediate fitting."

Section 12 provides for the levy of duties of Customs on goods imported or exported from India. Section 15 provides that the rates of duty and tariff valuation shall be the rate and valuation in force,—

“(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section;

A

(b) in the case of goods cleared from a warehouse under section 68, on the date on which the goods are actually removed from the warehouse;

B

(c) in the case of any other goods, on the date of payment of duty.”

Chapter VI of the Customs Act is concerned with “provisions relating to conveyances carrying imported or export goods”, Chapter VII deals with “clearance of imported goods and export goods”, Chapter VIII deals with “goods in transit” and Chapter IX deals with “ware-housing”. Section 29 to 43 occur in Chapter VI and sections 44 to 51 occur in Chapter VII. Sections 45 to 49 are dealt with under the heading ‘clearance of imported goods’ while sections 50 to 51 occur under the heading of ‘clearance of export goods’. Section 29 requires the person-in-charge of a vessel or an aircraft entering India from any place outside India not to cause or permit the vessel or aircraft to call or land (a) for the first time after arrival in India; or (b) at any time while carrying passengers or cargo brought in that vessel or aircraft, at any place other than a customs port or a customs airport, as the case may be. Section 30 imposes a duty on a person-in-charge of the conveyance carrying imported goods to deliver to the proper officer, within twenty four hours after arrival, an import manifest in the case of a vessel or aircraft or an import report, in the case of a vehicle, in the prescribed form. Section 31 prohibits the master of a vessel from permitting the unloading of any imported goods until an order has been given by the proper officer granting ‘entry inwards’ to such vessel. An ‘entry inwards’ order is not to be given until an import manifest has been delivered or unless the proper officer is satisfied that there was sufficient cause for not delivering it. Section 39 prohibits the master of a vessel from permitting the loading of any export goods other than the baggage and mail bags, until an order has been given by the proper officer granting ‘entry-outwards’ to such vessel. Section 41 prescribes that an export manifest in the case of a vessel or an aircraft and an export report in the case of a vehicle should be filed by the person-in-charge of a conveyance before the departure of the conveyance from a customs station. Section 42 prohibits the departure of a conveyance which has brought any imported goods or has loaded any export goods to depart from that customs station without a written

C

D

E

F

G

H

A order of the proper officer. Section 41 provides that the provisions of sections 30, 40 and 42 shall not apply to a vehicle which carries no goods other than the luggage of its occupants. Chapter VII, as we said, deals with clearance of imported goods and export goods. We are primarily concerned with s.46 and we consider it necessary to extract the whole of the section. It is as follows:-

B “46(1). 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:

C Provided that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a)
D to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under s.57 without warehousing the same.

E (2) Save as otherwise permitted by the proper officers, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

F (3) A bill of entry under sub-section(1) may be presented at any time after the delivery of the import manifest or import report as the case may be:

 Provided that the Collector of Customs may in any special circumstances permit a bill of entry to be presented before the delivery of such report:

G Provided further that a bill of entry may be presented even before the delivery of such manifest if the vessel by which the goods have been shipped for importation into India is expected to arrive within a week from the date of such presentation.

H (4) The importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to

the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.

A

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice-versa."

B

Section 47 deals with clearance of goods for home consumption and section 49 with storage of imported goods in warehouses pending clearance. Section 50 requires the exporter of any goods to make an entry thereof by presenting to the proper office, a Shipping bill in the case of goods to be exported in a vessel or aircraft and a bill of export in the case of goods to be exported by land.

C

Section 53 makes provision for permitting goods to be transmitted without payment of duty if they are 'mentioned in the import manifest as for transmit in the same vessel or aircraft.' Section 54 provides and prescribe the procedure for transshipment of goods without payment of duty. Chapter IX deals with 'Warehousing'. Section 57 provides for warehousing of dutiable goods without payment of duty. Section 68 provides for clearance of warehoused goods for home consumption on payment of duty. Section 69 provides for clearance of warehoused goods for exportation without payment of import duty if certain conditions are fulfilled.

D

E

The only other important provision requiring to be noticed by us is Item No. 76(1) of the First Schedule to the Indian Tariff Act which provides for the levy of 40 per cent ad valorem standard rate of duty on "ships and other vessels for inland and harbour navigation, including steamers, launches, boats and barges imported entire or in sections." Along with this entry has to be read the exemption granted by G.S.R. No. 930 which is in the following terms:

F

"In exercise of the powers conferred by sec.23 of the Sea Customs Act, 1878, as in force in India and as applied to the State of Pondicherry, the Central Government hereby exempts ocean going vessels imported into India or the State of Pondicherry, other than vessels imported to be broken up from, the whole of the duty of customs leviable thereon, provided that any such vessel if subsequently bro-

G

H

- A ken up shall be chargeable with the duty which would be payable on her if she were imported to be broken up."

- In regard to the levy of customs duty the scheme of the Act appears to be as follows:- Goods which are imported into India, that is, goods which are brought into India from a place outside India, are,
- B on entry into India, broadly classified into (i) goods entered for home consumption under sec.46(1)(i); (ii) goods entered for warehousing also under sec.46(1)(ii); (iii) goods in transit, and (iv) goods for transshipment. In the case of goods in transit and goods for transshipment duty is not required to be paid subject to fulfilling the conditions prescribed by secs.53 54, 55 and 56. In the case of these goods there is no need to present a Bill of Entry. Bill of Entry is necessary and has to be presented in the case of goods for home consumption or warehousing:
- C Goods entered for home consumption are required to be cleared on payment of duty. Warehoused goods may be cleared either for home consumption or exportation on payment of import duty or export duty as the case may be. Goods entered for home consumption are to be
- D subjected to duty at a rate and tariff valuation as on the date of presentation of a Bill of Entry under sec.46 and goods cleared from a warehouse are to be subjected to duty at a rate and tariff valuation as on the date of actual removal from the warehouse. Other goods, presumably goods not disclosed but discovered to be imported or which have otherwise escaped duty, are to be subjected to duty at a rate and
- E tariff valuation as on the date of payment of duty.

- Sec.46(1) which we have extracted earlier requires the importer of any goods for home consumption or warehousing to present to the proper officer a bill of entry in the prescribed form. The question, which arises for consideration, therefore, is whether the vessels in the
- F two cases before us are goods brought into India for home consumption? Mixed up with this question is the question whether a transhipper is an ocean going vessel? We will first consider the question whether a vessel is goods so as to attract sec.46(1) of the Customs Act. By definition a vessel, aircraft or vehicle is included among goods, vide sec.2(22). But, according to Shri Setalvad, notwithstanding the definition, the scheme of Chapters VI and VII of the Customs Act and the
- G context in which the expression 'goods' is used in sec.46 of the Act require the expression to be interpreted for the purpose of sec.46(1) as excluding a vessel, aircraft or vehicle. In answer to a direct question by us, Shri Setalvad confessed that if a vessel, aircraft and vehicle are required to be excluded from the meaning of the expression 'goods' in
- H sec.46(1) of the Act, he was unable to suggest what other purpose was

to be served by the inclusive definition of the expression which expressly brought within its shadow 'vessel, aircraft and vehicle'. He frankly stated that he was unable to point out any provision in the Act into which the inclusive definition could be read. We cannot attribute redundancy to the legislature particularly in the case of a definition in a taxing statute. We must proceed on the basis that such a definition is designed to achieve a result. Under sec.12 of the Customs Act what are dutiable are goods imported into or exported from India and if goods are defined to include vessels, aircrafts and vehicles, we must take it that the object of the inclusive definition was to bring within the net of taxation vessels, aircrafts and vehicles which are imported into India. It is undisputed and indeed it is indisputable that sec.46(1) is a prelude to the levy of duty or a first step in that direction. It must, therefore, follow as a necessary sequitur that vessels, aircrafts and vehicles are goods for the purpose of sec.46(1). Any other interpretation may lead to most anomalous results. Under sec.15 of the Customs Act, the rate of duty and tariff valuation in the case of goods entered for home consumption under sec.46 shall be as on the date when the bill of entry is presented, in the case of goods cleared from a warehouse under sec.68 as on the date on which the goods are actually removed from the warehouse and in the case of any other goods as on the date of payment of duty. Goods which are entered for home consumption under sec.46 and goods which are warehoused are naturally goods which are openly imported into India without concealment. The expression 'other goods' mentioned in sec.15(c) is obviously meant to cover other imported goods such as goods imported clandestinely and goods which have otherwise escaped duty.

Now, if a motorcar is brought by road into India from a place outside India for the purpose of being used in India, what is to be done with it and what is the point of time with reference to which it is to be subjected to the levy of customs duty? Surely, it is not meant to be subjected to duty as on the date of payment of duty as provided by sec.15(1)(c), ranking with goods not disclosed but discovered to be imported. It would be unreasonable to subject the car to the levy of duty as on the date of payment of duty instead of on the date prescribed by sec.15(1)(a) of the Act, that is, the date on which a bill of entry is presented under sec.46 as in the case of all other goods entered for home consumption. Shri Setalvad's submission was based on what he described as the scheme of Chapters VI and VII of the Act. The circumstance that in the several provisions contained in Chapter VI, the reference to 'goods' is to goods which are carried and not the carriers themselves, is not very material since the chapter itself deals

- A with 'conveyances carrying imported or exported goods' and not to goods which are themselves conveyances, that is, which are either vessels, aircrafts or vehicles. Going to Chapter VII, Shri Setalvad particularly drew our attention to Sec.46(2) which speaks of including in a Bill of Entry the goods mentioned in the bill of lading or other receipts given by the carrier to the consignor and to the unloading of
- B goods referred to in sec.45 and 48 and argued that the reference to 'goods' here could only be to goods carried and not to the carriers themselves as in Chapter VI. We do not think that we can accept this contention. It may be that in sec.46(2) and elsewhere the word 'goods' is used in such a way as not to include and as contradistinguished from the conveyances in which the goods are carried, depending upon the
- C context. But that does not mean that despite the definition, the word is never to be understood as defined and that it should always be interpreted as never to include vessels, aircrafts and vehicles even when there is nothing in the context justifying their exclusion. We can see no justification for holding that a vessel is not 'goods' for the purpose of sec.46(1).

D

- The further question is whether the vessels which have been converted into transhippers to be used in Indian territorial waters for topping up bulk carriers, can be said to be vessels for home consumption merely on that account, even though when they entered Indian territorial waters they came under their own power as ocean going
- E vessels and notwithstanding that they are still capable of being used as ocean going vessels and are in fact so used during the off-season when it is not practicable to do topping up operations and, for that matter, even during the fair season when they have necessarily to go into the open sea to go alongside the bulk carriers in open anchorages. In both the cases before us there can be no doubt that the vessels are not only
- F capable of being used but are used as cargo ships to carry cargo from one Indian port to another or some times to foreign ports, necessarily going out on the high seas. They are structural and technically competent to go on the high seas and they have been certified to be so competent by appropriate maritime authorities. Instead of remaining idle and getting rusty, during off-season, that is when because of inclement
- G monsoon weather topping up operations cannot be done in Mormugao harbour, the vessels do go out into the open sea sometimes from one Indian port to another and at other times to foreign ports. Of course, even in the course of topping up operations during the fair season, it is necessary for the transhippers to go into the open sea to reach the bulk carriers. But, in our view, these operations do not make these vessels
- H ocean going vessels when their primary purpose and the purpose for

which they were permitted to be purchased and brought to Indian waters, the primary purpose for which they were licensed and the primary purpose for which they are used is to conduct topping up operations in Indian territorial waters and not to serve as ocean-going vessels. In the very application that Chowgule and Co. Pvt. Ltd. made to the Government of India for purchasing the vessel, it was stated that they wanted to purchase the vessel for use as a topping up vessel at Mormugao harbour for iron ore. The permission granted was also for that purpose. The certificate of condition issued by Bureau Veritas showed that the vessel was to be mainly employed as an ore loading barge in the harbour of Goa with the possibility of extending her 'exploitation in certain periods of the year as bulk carrier for small coasting trade.' Similarly in the case of the other vessel also the application of M/s. V.S. Dempos Company Pvt. Ltd. was for the purpose of the vessel Jagat Swamini for use as a transhipper. The Government of India also granted its permission for the conversion of Jagat Swamini for use as a transhipper at Mormugao port. It is clear from the material placed before us that both the vessels, the Maratha transhipper and Priyamavadha were originally ocean going vessels, that they were converted as transhippers for the purpose of topping up iron ore at Mormugao harbour and that they traversed the open sea from Yokohama in Japan and Bremen in Germany respectively to reach Mormugao. At the time they entered the territorial waters at Mormugao it was distinctly understood and intended that the vessels were to be primarily used for topping up operations at Mormugao. If ocean journeys were to be undertaken either they were incidental to the primary purpose of topping up bulk carriers at Mormugao or they were occasionally undertaken when topping up operations were not possible at Mormugao during the inclement monsoon season. This much is indisputable that though the vessels came on the high seas to reach Mormugao harbour, they were brought to India primarily for the purpose of topping up operations at Mormugao.

In our view, for the purpose of the levy of Customs Duty, in order to determine whether any imported goods are goods for home consumption', we have to find out the primary intended use of goods when the goods are brought into Indian Territorial waters. If the goods are intended to be primarily used in India, they are goods for home consumption notwithstanding that they may also be used for the same or other purposes outside India. We guard ourselves against saying that the converse may be true. The question whether goods not intended to be primarily used in India but used occasionally for short periods in India also fall within the meaning of the expression 'goods

- A for home consumption' has not been examined by us. We have only considered the question whether goods brought into India for use primarily in India are goods for home consumption notwithstanding that they are occasionally or incidentally used outside India. We are of the view that they are. The vessels, in these two cases, were brought into India to be used primarily as Transhippers at Mormugao, though
- B used incidentally or occasionally to go into the open sea. They are, therefore, 'goods for home consumption' and not ocean going vessels for the purposes of the Customs Act. After their conversion they were no longer ocean going vessels, in the full sense of the term that is in the sense that their predominant purpose was use as ships traversing the open seas. It was, therefore, necessary to present Bills of Entry in
- C respect of both the vessels.

- The learned counsel for the appellants argued that it has been the consistent practice of the Customs Authorities not to insist on Bills of Entry in the case of ocean going vessels. They quoted the statement to that effect from the counter affidavit filed in Civil Appeal No. 4427 of 1985 and cited the example of a number of ocean going vessels which had not been required to present Bills of Entry. It may be that in the case of ocean going vessels, that is, vessels which are primarily used for traversing the open seas, the Customs Authorities have not been insisting on Bills of Entry being presented. It may be that the
- D vessels mentioned by the Appellants as having been permitted to enter into Indian Territorial waters without Bills of Entry are not primarily intended to be used in India and that they do answer the description of ocean going vessels. We do not have precise information about those vessels to conclude that the character of those vessels was the same as the Transhippers with which we are concerned.
- E

- F In the result, both the appeals are dismissed with the costs.

A.P.J.

Appeals dismissed.