

# SUPREME COURT OF INDIA

Aban Loyd Chiles Offshore Ltd.

Vs.

Union of India & Ors.

C.A.No.2236 of 2002

(Ashok Bhan and Dalveer Bhandari, JJ.)

11.04.2008

## JUDGMENT

### **Ashok Bhan, J.**

1. These appeals are being disposed of by this common Judgment as the facts and questions of law involved in these appeals are the same. For the sake of convenience, the facts are taken from Civil Appeal No. 6148 of 2002.

2. This Appeal is directed against the Judgment of the Bombay High Court dated 05.06.2002 rendered in the Appellants Writ Petition No. 1336 of 2002. By the impugned Judgment, the High Court dismissed the Writ Petition on the ground that the questions in issue were covered by a previous Division Bench Judgment of the same High Court in Writ Petition No. 1818 of 2002 [*Pride Foramer v. Union of India*].

3. The principal issue that falls for consideration in this case is:-

“Whether oil rigs engaged in operations in the exclusive economic zone/ continental shelf of India, falling outside the territorial waters of India, are foreign going vessels as defined by Section 2(21) of the Customs Act, 1962, and are entitled to consume imported stores thereon without payment of customs duty in terms of Section 87 of the Customs Act, 1962?”

### **FACTS**

4. The Appellants are engaged in drilling operations for exploration of offshore oil, gas and other related activities under contracts awarded by the Oil and Natural Gas Commission (for short, ONGC). The drilling operations are carried on at oil rigs/vessels, which are situated outside the territorial waters of India. Until around November, 1993, the Appellants, and all other similarly situated companies which were engaged in oil and gas exploration and exploitation were permitted to transship stores to the oil rigs without levy of any customs

duty regardless of the fact whether oil rigs were operating within a designated area or non-designated area.

5. November, 1993 onwards, the Revenue Authorities (for short, respondents) refused to permit companies engaged in onward offshore operations, to transship stores to the oil rigs, without payment of customs duty.

6. Appellants filed Writ Petition No. 610 of 1994 challenging the levy of customs duty on transshipment of goods/stores imported by drilling contractors and supplied to oil rigs, as stores for consumption on board on the oil rigs. The Bombay High Court by its interim order dated 07.02.1994 held that the Appellant shall be permitted to clear the consignments without payment of duty on execution of bond. The Bombay High Court by its Judgment dated 15.01.1996 in *Amership Management Pvt. Ltd. v. Union of India*<sup>1</sup> allowed a group of Writ Petitions filed by similarly placed oil rig operators. The High Court in the aforesaid Judgment held that the oil rigs are foreign going vessels as defined in Section 2(21) of the Customs Act, 1962 (for short, the Customs Act). The spare parts or equipment for the oil rigs were stores and the writ petitioners were entitled to clear the stores to the oil rigs, without payment of customs duty, by availing exemptions under Sections 86(2), 87 read with Section 2(21) of the Customs Act, 1962.

7. The Appellants Writ Petition No. 610 of 1994 was allowed on 24.04.1998 following the Judgment in *Amership Management* case (supra). The Respondents were directed to allow clearance of the ship stores and spares for use on the oil rigs without recovery of customs duty. The Civil Appeals preferred by the Revenue against the Judgment in the Appellants case was dismissed by this Courts Order dated 13.03.2001 which reads as under: -

“Learned counsel for the appellants draws our attention to the fact that by an order dated 19th April, 1999 the special leave petitions in this matter had been ordered to be linked with S.L.P.(C)...../1999 (D.No.6232/97). Subsequently, on 13th May, 1999, the number was corrected as S.L.P.(C) Nos...../99 (D.No.6292/97). Now, learned counsel for the Revenue submits that these appeals should be adjourned for two weeks and both matters listed together. Learned counsel for the respondents draws our attention to the office report dated 12th March, 2001 in this matter. The relevant portion of the office report reads thus:

"Pursuant to Court's Order dated 13th May, 1999, it is submitted for the information of the Hon'ble court that Special Leave Petition (Civil) No.... of 1999 (D.No.6292 of 1997) was returned to the Advocate for the Appellant on 22nd April, 1997 for curing the defects but till date the same has not been re-filed despite this Registry's letters dated 24th May, 1999, 7th July, 1999 and reminder dated 24th February, 2000."

Having regard to the failure of the appellants to do what was required to be done till date, the application for adjournment is refused. The appeals will go on. Learned counsel for the appellants says that he is not in a position to argue the matter. The appeals are dismissed with costs.

8. The Central Government issued Notification No. S.O. 429 (E) dated 18.07.1986 under Section 6(5)(a) and Section 7(6)(a) of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (for short, the Maritime Zones Act, 1976) by which certain areas were identified as designated areas. The designated areas are more than 12 nautical miles away from the shore and are outside the territorial waters of India.

9. The Central Government by Notification No. 11/87-CUSTOMS dated 14.01.1987 issued under Section 6(6)(a) and Section 7(7)(a) of the Maritime Zones Act, 1976 extended the Customs Act and the Customs Tariff Act, 1975 to the designated areas.

10. The Central Government by Notification No. S.O. 643 (E) dated 19.09.1996, in exercise of its powers under Section 6(5)(a) and Section 7(6)(a) of the Maritime Zones Act, 1976, further declared certain areas in the continental shelf and the exclusive economic zone where the installations, structures and platforms were located as designated areas.

11. By a subsequent Notification No. S.O. 189 (E) dated 11.02.2002, the Central Government in exercise of its power under Section 6(5)(a) and Section 7(6)(a) of the Maritime Zones Act, 1976, extended the Customs Act and Customs Tariff Act to the continental shelf of India and the exclusive economic zone of India with effect from the date of publication of the Notification in the Official Gazette for the following purposes, viz. :-

“a) The prospecting for extraction for production of mineral oils in the continental shelf of India or the exclusive economic zone of India and

a) The supply of any goods as defined in clause (22) of Section 2 of the Customs Act, 1962 in connection with any of the activities referred to in clause (a).”

12. The *Pride Foramer*, another oil rig operator, similarly placed to the rig operators covered in *Amership Management* case (supra) sought permission to clear the ship stores/spares for use on its rig without the payment of customs duty. The said permission was refused. Aggrieved against, *Pride Foramer* filed Writ Petition No. 1818 of 2000 before the Bombay High Court. The Bombay High Court by its Order dated 24.04.2001 dismissed the Writ Petition. Same is reported as *Pride Foramer v. Union of India*<sup>2</sup>

13. The High Court after extensively referring to the relevant provisions of the Constitution of India, General Clauses Act, Customs Act, Maritime Zones Act, 1976, the Notifications issued under the Maritime Zones Act, 1976, i.e., No. S.O. 429 (E) dated 18.07.1986, No. 11/87-CUSTOMS dated 14.01.1987, No. S.O. 643 (E) dated 19.09.1996, Convention on Law of Sea known as Union Nations Convention on the Law of Sea, 1982 (for short, UNCLOS, 1982) concluded as under: -

For all the reasons stated above, we are of the view that the respondents are perfectly justified in refusing to permit the petitioner to clear, ship stores and spares for use on the Oil

Rig, on transshipment permit and without payment of customs duty while the Oil Rig is in a designated area. We also hold that the continental shelf land the exclusive economic zone are the parts of India in view of the provisions of sections 6(6) and 7(7) of the Maritime Zones Act and for the purposes thereof and pursuant to notifications referred to in para 26 (Supra) the provisions of the Customs Act, 1982 were extended to such areas, consequently, the Oil Rigs proceeding to such areas or operating therein are not foreign going vessels under section 2(21) of the Customs Act. If that is so, the petitioner is not entitled to the benefit of section 53 read with 54 and/or of section 86 r/w 87 of the Customs Act. In view of our view the petition must fail.

14. In the present case, Appellants imported the stores by air which landed at Sahara Airport. When they sought clearance to shift stores without payment of duty, the same was declined by the Revenue Authorities on 24.12.2001, by passing the following order:-

“Please refer your letter dated 14.12.2001 on the above subject. I am directed to inform you that your request on the above subject can not be granted in view of judgment of the Honble High Court of Bombay in W.P. No. 1818/2000 in case of M/s. Pride Foramer. It may be noted that the Honble Supreme Courts interim order in the case of Aban Lloyd is only applicable to them and as such the benefit of the said order cannot be extended to you.”

15. The Appellants, thereafter, filed the Writ Petition in the High Court which has been dismissed by the impugned Order following the decision in Pride Foramers case (supra).

16. The Counsel appearing for the assessee in Pride Foramers case (supra), had raised, broadly speaking, three submissions which were categorized by the High Court under the following broad heads: -

“(A) The Oil Rig is vessel.

(B) The Oil Rig engaged in exploration/exploitation of offshore oil, gas and other related services outside the territorial waters of India whilst operating in designated area is a foreign going vessel pursuant to section 2(21)

(ii) Of the Customs Act.

(A) The goods sent to the Oil Rig are stores and are liable to be transhipped to the Rig without, payment of any custom duty or at any rate the petitioner is entitled to tranship spares without payment of custom duty under sections 53 and 54 of the Customs Act.”

17. The High Court in Pride Foramers case (supra) held that oil rig is a vessel, thus, submission categorized as (A) was decided in favour of the assessee. The two other submissions which had been categorized as (B) and (C) were decided in favour of the Revenue and against the assessee.

18. Although, in the present case, the Petitioners before the High Court, had raised the plea that the Appellants were entitled to transship spares without payment of duty under Sections 53 and 54 of the Customs Act, the same was not pressed into service before us as Chapter VIII in which Sections 53 and 54 find their place does not apply to baggage, postal articles and stores (Section 52). Undoubtedly, the goods in question are stores and, therefore, the submission regarding applicability of Sections 53 and 54 of the Customs Act were not pressed into service before us.

19. Before proceeding to take up the rival contentions raised by the parties in this Appeal, it would be appropriate to refer to the relevant provisions of the Constitution of India, Customs Act, 1962, Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 existing at the relevant time and the International Conventions and provisions thereof: -

“ARTICLE 1(3) OF THE CONSTITUTION OF INDIA provides that the TERRITORY OF INDIA shall comprise of-

- a) The territories of States;
- b) The Union territories specified in the First Schedule; and
- c) Such other territories as may be acquired.

SECTION 3(28) OF THE GENERAL CLAUSES ACT provides that: -

India shall mean-

- a) XXX XXX
- b) XXX XXX
- c) As respects any period after the commencement of Constitution all territories for the time being comprised in the territory of India.”

SECTION 2(27) OF THE CUSTOMS ACT, 1962 defines INDIA as under:-

India includes the territorial waters of India. This definition under the Customs Act is relevant for the purposes of the Customs Act only.

RELEVANT PROVISIONS OF CUSTOMS ACT, 1962 SECTION 2(21) assigns the following meaning to the FOREIGN GOING VESSEL OR AIRCRAFT: -

foreign-going vessel or aircraft means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes-

“i) XXX XXX ;

ii) XXX XXX;

iii) Any vessel or aircraft proceeding to a place outside India for any purpose whatsoever;

SECTION 2(28) defines to mean INDIAN CUSTOMS WATER: -

Indian Customs Water means the waters extending into the sea upto the limit of contiguous zone of India under section 5 of the Territorial Waters Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, (80 of 1976) and includes any bay, gulf, harbour, creek or tidal river;

SECTION 52 reads as under: -

Chapter not to apply to baggage, postal articles and stores- The provisions of this Chapter shall not apply to (a) baggage, (b) goods imported by post, and (c) stores.

SECTION 53 reads as under: -

Transit of certain goods without payment of duty.-(1) Subject to the provisions of section 11, any goods imported in a conveyance and mentioned in the import manifest or the import report, as the case may be, as for transit in the same conveyance to any place outside India or any customs station may be allowed to be so transited without payment of duty.

SECTION 54 reads as under: -

Transshipment of goods without payment of duty.-(1) Where any goods imported into a customs port or customs airport are intended for transshipment, a bill of transshipment shall be presented to the proper officer in the prescribed form:

SECTION 86 provides that: -

Transit and transshipment of stores.-(1) any stores imported in a vessel or aircraft may, without payment of duty, remain on board such vessel or aircraft while it is in India.

(2) Any stores imported in a vessel or aircraft may, with the permission of the proper officer, be transferred to any vessel or aircraft as stores for consumption therein as provided in section 87 or section 90.

SECTION 87 provides that: -

Imported stores may be consumed on board a foreign-going vessel or aircraft.-Any imported stores on board a vessel or aircraft (other than stores to which section 90 applies) may, without payment of duty, be consumed thereon as stores during the period such vessel or aircraft is a foreign-going vessel or aircraft.

ARTICLE 297 OF THE CONSTITUTION OF INDIA as it originally existed was as under: -

ARTICLE 297-

All lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purposes of the Union.

Article 297 was amended in 1963 to include the words or the continental shelf after the words territorial waters.

Article 297 was again amended in 1976 to read as under: -

ARTICLE 297-

Things of value within territorial waters or continental shelf and resources of the exclusive economic zone to vest in the Union:

All lands, mineral land other things of value underlying the ocean within the territorial waters, or the continental shelf, or the exclusive economic zone, of India shall vest in the Union and be held for the purposes of the Union.

All other resources of the exclusive economic zone of India shall also vest in the Union and be held for the purposes of the Union.

The limits of the territorial waters, the continental shelf, the exclusive economic zone, and other maritime zones, of India shall be such as may be specified, from time to time, by or under any law made by Parliament.

20. The Maritime Zones Act, 1976 was enacted to provide for certain matters relating to the territorial waters, continental shelf, exclusive economic zone and other maritime zones of India. The Maritime Zones Act, 1976 provides that the said Act is a sequel to the amendment

to Article 297 and that it was in consonance with what has been accepted by the international community of States.

21. It is relevant to refer to the Statement of Objects and Reasons of the Bill introduced for enactment of the Maritime Zones Act, 1976 which, inter alia, provides as under: -

“Statement of Objects and Reasons

The Bill is a sequel to the latest Constitution Amendment Bill relating to the substitution of Article 297 by a new Article. According to new Article 297, all lands, minerals and other things of value underlying the ocean within the territorial waters, or the continental shelf, or the exclusive economic zone as well as other resources of the exclusive economic zone, vest in the union to be held for the purposes of the Union. The new Article also provides that the limits of the territorial waters, the continental shelf, the exclusive economic zone and other maritime zones of India shall be such as may be specified, from time to time, by or under any law made by Parliament.”

2. At present India does not have a comprehensive legislation on the law of sea. The limits of the territorial waters and the continental shelf are governed by the proclamations issued by the President. As envisaged by new Article 297, it is intended to provide for the limits of the territorial waters, the continental shelf, the exclusive economic zone and other maritime zones of India by a Parliamentary law. For safeguarding the interests of the nation, it is also necessary to provide for a general legal framework specifying the nature, scope and extent of Indias rights, jurisdiction and control in relation to the various maritime zones, the maritime boundaries between India and other States whose coasts are opposite or adjacent to those of India and for the exploration and protection of the resources of our continental shelf and exclusive economic zone. Hence this Bill.

3. The maritime zones of India include the territorial waters, contiguous zone, the continental shelf, the exclusive economic zone and the historic waters of India. The territorial waters and the continental shelf are traditional concepts in international Law and the national jurisdiction in these zones is well established. The concept of the exclusive economic zone which has been developed at the initiative of developing countries has gained acceptance of the international community of States. The concept of contiguous zone which is located within the exclusive economic zone and over which additional jurisdiction is claimed by coastal States has also been accepted by the international community of States. Provision has also been made in the Bill regarding the historic waters of India which are adjacent to its land territory and over which India has sovereignty. The limits of these waters such as the waters in the Palk Bay and the Gulf of Manaar, will be specified by the Central Government by notification in the Official Gazette. The limits of other maritime zones of India have been specified in the Bill itself. The Bill empowers the Central Government to alter, by notification in the Official Gazette, the limits of these maritime zones. It has been

made clear that notifications for altering the limits as specified in the Bill shall not be issued unless both Houses of Parliament have passed resolutions approving the issue of such notifications.

4. It is proposed to undertake separate legislation in future as and when need arises for dealing in greater detail with the regulation, exploration and exploitation of particular resources or particular groups of resources of the continental shelf and the exclusive economic zone as well as with other matters in which India has jurisdiction in the maritime zones, and with regard to these matters the Bill makes only broad general provisions.

22. Section 3(2) defines the limit of territorial waters as the line every point of which is at a distance of twelve nautical miles from the nearest point of the appropriate base line. Section 3(3) authorizes the Central Government to alter the limits of territorial waters. The same reads as under: -

SECTION 3(3)-

Sovereignty over, and limits of territorial waters.-(3) Notwithstanding anything contained in sub-section (2), the Central Government may whenever it considers necessary so to do having regard to International Law and State practice, alter, by notification in the Official Gazette, the limit of the territorial waters.

23. Section 3(4) of the Maritime Zones Act, 1976, reads as under: -

“SECTION 3(4)-

No notification shall be issued under sub-section (3) unless resolutions approving the issue of such notification are passed by both Houses of Parliament.”

24. Section 6 of the Maritime Zones Act, 1976 defines Continental Shelf of India. Section 6(5) authorizes the Central Government to declare any area on the continental shelf as designated area. The same reads as under: -

SECTION 6(5)-

The Central Government may, by notification in the Official Gazette,-

a) Declare any area of the continental shelf and its superjacent waters to be a designated area; and

b) Make such provisions as it may deem necessary with respect to,-

i) The exploration, exploitation and protection of the resources of the continental shelf within such designated area; or

ii) The safety and protection of artificial islands, of shore terminals, installations and other structures and devices in such designated area; or

iii) The protection of marine environment of such designated area; or

iv) customs and other fiscal matters in relation to such designated area. Explanation- A notification issued under this sub-section may provide for the regulation of entry into and passage through the designated area of foreign ships by the establishment of fairways, sealanes, traffic separation schemes or any other mode of ensuring freedom of navigation which is not prejudicial to the interests of India.

25. Central Government, has been authorized to extend the enactment for the time being in force in India to the continental shelf of any designated area on the continental shelf by issuing a notification under Section 6(6) which reads as under: -

**SECTION 6(6)-**

The Central Government may by notification in the Official Gazette.-

(a) Extend, with such restrictions and modifications as it thinks fit, any enactment for the time being in force in India or any part thereof to the continental shelf or any part [including any designated area under sub-section (5)] thereof; and

(b) Make such provisions as it may consider necessary for facilitating the enforcement of such enactment, and any enactment so extended shall have effect as if the continental shelf or the part [including, as the case may be, any designated area under sub-section (5)] thereof to which it has been extended is a part of the territory of India.

26. Section 6(7) of the Act reads as under: -

**SECTION 6(7)-**

Without prejudice to the provisions of sub-section (2) and subject to any measures that may be necessary for protecting the interests of India, the Central Government may not impede the laying or maintenance of submarine cables or pipelines on the continental shelf by foreign States:

Provided that the consent of the Central Government shall be necessary for the delineation of the course of the laying of such cable or pipelines.

27. Section 7 defines exclusive economic zone of India. Section 7(6) authorizes the Central Government to declare any area in the exclusive economic zone in the designated area. The same reads as under: -

#### SECTION 7(6)-

The Central Government may, by notification in Official Gazette,-

a) Declare any area of the exclusive economic zone to be a designated area; and

b) Make such provisions as it may deem necessary with respect to,-

(i) The exploration, exploitation and protection of the resources of such designated area; or

(ii) Other activities for the economic exploitation and exploration of such designated area such as the production of energy from tides, winds and currents; or

(iii) The safety and protection of artificial island, of shore terminals, installations and other structures and devices in such designated area; or

(iv) The protection of marine environment of such designated area; or

(v) Customs and other fiscal matters in relation to such designated area.

Explanation- A notification issued under this sub-section may provide for the regulation of entry into and passage through the designated area of foreign ships by the establishment of fairways, sealanes, traffic separation schemes or any other mode of ensuring freedom of navigation which is not prejudicial to the interests of India.

28. Under Section 7(7) of the Maritime Zones Act, 1976, Central Government has been authorized to extend the enactment for the time being in force in India to the exclusive economic zone or any part thereof in the exclusive economic zone or any part thereof by issuing a notification. The said Section reads as under: -

#### SECTION 7(7)-

The Central Government may by notification in the Official Gazette.-

(a) Extend, with such restrictions and modifications as it thinks fit, any enactment for the time being in force in India or any part thereof in the exclusive economic zone or any part thereof; and

(b) Make such provisions as it may consider necessary for facilitating the enforcement of such enactment, and any enactment so extended shall have effect as if the exclusive economic zone or the part thereof to which it has been extended is a part of the territory of India.

29. The relevant notifications issued under the Maritime Zones Act, 1976 are M.E.A. No: S.O. 429 (E) dated 18.07.1986 (effective since Jan. 15th 1987) and No. S.O. 643(E) dated 19.9.1996 which took immediate effect.

30. The text of notification no. No: 429 (E) dated 18.07.1986 is as under: -

“S.O. 429 (E): - In exercise of the powers conferred by clause (a) of sub-section (5) of section 6 and clause (a) and sub-section (6) of section (7) of the Territorial Waters, Continental Shelf, Exclusive Economic Zones and Other Maritime Zones Act, 1976 (80 of 1976), the Central Government hereby declares the areas in the continental shelf or, as the case may be, in the exclusive economic zone of India where the installations, structures and platforms, the coordinates of which are given in the Schedule below, are situate and the areas extending upto five hundred metres from the said installations structures and platforms as designated areas for the purposes of the said sections.”

31. As per notification No. 11/87-CUSTOMS dated 14.01.1987, the provisions of Customs Act were extended to areas in the Continental Shelf and the Exclusive Economic Zones of India. The text of the notification is as under: -

“GSR 30(E)-In exercise of powers conferred by Clause (a) of sub-section (6) of section 6 and clause (a) of sub-section (7) of section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976), the Central Government hereby extends the Customs Act, 1962 (52 of 1962) and the Customs Tariff Act, 1975 (51 of 1975) to the designated areas in the Continental Shelf and the Exclusive Economic Zone of India as declared by the Notification of the Government of India in the Ministry of External Affairs number S.O. 429(E) dated 18th July, 1986, with effect from 15th day of January, 1987.”

32. The text of notification no. S.O. 643 (E) dated 19.09.1996 is as under: -

“S.O. 643(E)- In exercise of the powers conferred by clause (a) of sub-section (5) of section 6 and clause (a) of sub-section (6) of section 7 of the Territorial Waters, Continent Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976), the Central Government hereby declares the areas in the continental shelf or, as the case may be, in the exclusive zone of India where the installations, structures and platforms, the coordinates of which are given in the Schedule below, are situated and the areas extending up to five hundred metres from the said installations, structures and platforms as designated areas for the purposes of the said sections.”

33. The fourth notification number S.O. 189(E) was issued on 11.02.2002, after the filing of the Writ Petition in the High Court but before rendering of the Judgment. The same reads as under: -

“S.O. 189(E), in exercise of the powers conferred by clause (a) of sub-section (5) of section 6 and clause (a) of sub-section (6) of section 7 of the territorial waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976), the Central Government hereby extends the Customs Act, 1962 (52 of 1962) and Customs Tariff Act 1975 (51 of 1975) to the continental shelf of India and the exclusive economic zone of India with effect from the date of publication of this notification in the Official Gazette for the following purpose namely the prospecting for extraction or production of mineral oils in the continental shelf of India or the exclusive economic zone of India and the supply of any goods as defined in clause (22) of Section 2 of the Customs Act, 1962 in connection with any of the activities referred to in clause

(a).Explanation: For the purposes of this notification mineral oils include petroleum and natural gas.”

## INTERNATIONAL COVENANTS AND PROVISIONS THEREOF

34. In the Eleventh Session, on 30.04.1982, Conference adopted the draft Convention on the Law of Sea by the overwhelming majority of 159 States. The Convention on the Law of Sea known as United National Convention on the Law of Sea, 1982 (for short, UNCLOS, 1982) has 320 Articles. They are divided into seventeen parts and nine annexure. It lays down rules for all parts and virtually all users of seas and oceans. The relevant clauses thereof are as under:-

### “Article 2

Legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil:-

1. The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.
2. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.
3. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.

Article 3. Breadth of the territorial sea: -Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.

Article 33. Contiguous Zone: -

1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to: (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea; (b) punish infringement of the above laws and regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Article 55. Specific legal regime of the exclusive economic zone: -

The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention. Article 56. Rights, jurisdiction and duties of the coastal State in the exclusive economic zone: -

1. In the exclusive economic zone, the coastal State has: (a) sovereign rights for the purposes of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:

(i) The establishment and use of artificial islands, installations and structures;

(ii) Marine scientific research;

(iii) The protection and preservation of the marine environment; (c) other rights and duties provided for in this Convention.

2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

3. The rights set out in this article with respect to the sea-bed and subsoil shall be exercised in accordance with Part VI.

Article 57 Breadth of the exclusive economic zone. The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Article 127 Customs duties, taxes and other charges:-

1. Traffic in transit shall not be subject to any customs duties, taxes or other charges except charges levied for specific services rendered in connection with such traffic.
2. Means of transport in transit and other facilities provided for and used by land-locked States shall not be subject to taxes or charges higher than those levied for the use of means of transport of the transit State.

#### CONTENTIONS ON BEHALF OF THE APPELLANTS”

35. In the *Jindal Drilling & Industries Ltd. & Anr. v. Union of India & Ors. and Aban Loyd Chiles Offshore Ltd. & Anr. v. Union of India & Ors*<sup>4</sup>. the subject vessels are oil rigs. In the case of *Great Eastern Shipping Co. Ltd. & Anr. v. Union of India & Ors.* (Civil Appeal No. 4444/2006), the subject vessel is a barge. Oil rigs are vessels and the barge is also a vessel. Counsel for the Appellants contends that the Appellants oil rigs answer the description of a foreign going vessel under the Customs Act. The issue whether oil rigs are vessels was considered in detail by the Division Bench of the Bombay High Court in *Amership Management* case (supra) and this Judgment attained finality inasmuch as it has not been challenged before this Court. That it was held in *Amership Management* case (supra) that oil rigs were vessels and were entitled to transshipment of stores, without payment of customs duty, in view of the exemptions contained in Section 86(2) read with Section 87 and Section 2(21) of the Customs Act.

36. In *Pride Foramers* case (supra), the Bombay High Court proceeded on the basis that the oil rig was a vessel. It was not the case of the Department that the exemption is being denied on the ground that the oil rigs/barge is not vessels. Rather, the finding of the High Court was that they are not foreign going vessels because the continental shelf and exclusive economic zones are parts of India in view of the provisions of Sections 6(6) and 7(7) of the *Maritime Zones Act, 1976* and for the purposes thereof and pursuant to notifications issued on 18.07.1986, 14.01.1987 and 19.09.1996. The provisions of the Customs Act were extended to contiguous zones, continental shelf and exclusive economic zones; consequently, the oil rigs proceeding to such areas or operating therein are not foreign going vessels under Section 2(21) of the Customs Act.

37. According to the Learned Counsel, the reasoning of the High Court in *Pride Foramers* case (supra) following which the present case has been decided, is based on the incorrect premise. According to him, this reasoning completely ignores the inclusive part of the definition contained in Section 2(21). The requirement of unloading/loading outside India is absent in sub-clause (ii) of Section 2(21).

38. It is contended by him that the Appellants are entitled to the benefit of the exemption under Section 86(2) read with Section 87 of the Customs Act, 1962 with regard to stores consumed on the oil rigs. Elaborating further, it was submitted that Chapter XI of the Customs Act, 1962 contains Special provisions regarding baggage, goods imported or exported by post and stores. The expression stores is defined in Section 2(38). The goods

imported by the Appellants are stores. Section 87 contains statutory exemption with respect to the transshipment of stores. According to him, in order to claim the benefit of the exemption under Section 87 of the Customs Act, the following conditions must be fulfilled: -

- “a) The imported goods must be stores;
- b) The stores must be consumed on a vessel or aircraft;
- c) The vessel or the aircraft must be a foreign-going vessel or aircraft; and
- d) The stores must be consumed during the period such vessel or aircraft is a foreign-going vessel or aircraft.”

39. Where these conditions are fulfilled, a person is entitled to consume the stores without payment of duty. In addition, under Section 86(2), a person is entitled to transship stores to a foreign-going vessel or aircraft, with the permission of the proper officer. That in the present case, each and every requirement of Section 86(2) read with Section 87 has been fulfilled by the Appellants. The Respondents have failed to point out a single missing ingredient. In the circumstances, the proper officer/Respondents were duty bound under law to permit the transshipment of stores without insisting upon the payment of customs duty. On a strict construction of the plain language used under the Customs Act, the Appellants were and are entitled to the benefit of Section 86(2) read with Section 87.

40. It is further contended that the provisions of the Maritime Zones Act, 1976 do not impinge on the Appellants entitlement to the exemption under Section 86(2) read with Section 87 of the Customs Act. The levy of customs duty on the goods imported into, or exported from, India is provided for under Section 12 of the Customs Act, 1962. Section 12 is the charging Section which provides- Except as otherwise provided in this Act duties of customs shall be levied on goods imported into, or exported, from India. The significance of the opening words of Section 12 is that where a provision of the Customs Act exempts the payment of duty, no duty would be leviable even when goods are imported or exported. In the present case, there is no levy of customs duty on the imported stores since the statute itself in Sections 86(2) and 87 makes a specific provision for an exemption. In the light of the statutory exemption contained in Section 86(2) read with Section 87, no duty is chargeable from the Appellants with respect to stores consumed on foreign going vessels. Taking the argument further, it was submitted that it is settled law that the import of goods into India commences when the goods cross into the territorial waters of India and completes when the goods become part of the mass of goods in the country. The taxable event is reached at the time when the goods reach the custom barrier and the bill of entry for home consumption is filed. The taxable event does not occur on the date when the goods enter the territorial waters or the goods land in India. The taxable event occurs when the goods cross the customs barrier. With respect to the export of goods, the export is complete when a ship moves out of the territorial waters of India. This is so even where the goods do not land in any place outside India. According to him, for the purposes of ascertaining whether there is an import or an export, the demarcating line is the territorial waters of India. A fundamental rule for

ascertaining whether there has been an import or export of goods is to determine whether the goods have crossed into the territorial waters (for the purposes of import) or whether they have moved out of the territorial waters (for the purposes of export).

41. That the Maritime Zones Act, 1976 defines territorial waters of India, contiguous zone of India, continental shelf of India, exclusive Economic Zones of India, etc. Each of these concepts is distinct from one another and is carefully defined so as to eliminate any confusion of one concept with any other concept. Parliament recognizes the distinction and maintains the distinction in the Customs Act, 1962 as well. For instance, whereas territorial waters of India is used in Sections 2(21) and 2(27), the expression contiguous zone of India is used in Section 2(28) of the Customs Act.

42. It is further contended that it is a settled principle of law that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. The extent of territorial waters is prescribed under Section 3(2) of the Maritime Zones Act, 1976 as 12 nautical miles from the nearest point of appropriate baseline. Same can be extended only in the manner prescribed under Sections 3(3) and 3(4) of the Maritime Zones Act, 1976. Notifications issued under Sections 6(6) and 7(7) of the Maritime Zones Act, 1976 do not extend the limits of the territorial waters of India. The State or its Executive cannot interfere with the rights of others unless they can point to some specific provision of law which authorizes their act. Applying this principle to the present case, unless the Respondents can point to a specific provision of law authorizing the non-availability of the exemption under Sections 86(2) and 87 of the Customs Act, 1962, the actions of the Respondents would be unconstitutional and ultra vires. In the context of a taxing statute, such actions would amount to a transgression of Article 265 of the Constitution of India.

43. According to the learned Senior Counsel for the Appellants, the provisions of the Maritime Zones Act, 1976 do not adversely affect the Appellants case. It was argued that the territorial waters of India are a definite concept. The territorial waters are expressly defined under the Maritime Zones Act, 1976 to extend to 12 nautical miles from the shore. In view of Sections 3(3) and (4), the 12 nautical mile limit of territorial waters cannot be extended except by a notification in the Official Gazette. Such a notification may not be issued unless resolutions approving the issue are passed by both the Houses of Parliament. Moreover, the Central Government must have regard to international law and State practice before altering the limit of the territorial waters. It is undisputed that during the relevant period or even upto this day, the limit of territorial waters which is 12 nautical miles has not been extended. The 12 nautical mile limit as provided by India for its territorial waters is consistent with international law, specifically Article 3 of Section 2 of Part II of UNCLOS, 1982 which expressly provides that the breadth of territorial area shall not exceed 12 nautical miles.

44. It was contended that admittedly, the oil rigs are vessels and are carrying on operations more than 12 nautical miles from the shore of India. Hence, the oil rigs clearly answer the definition of a foreign going vessel carrying on operations outside the territorial waters of India, as defined under Section 2(21) of the Customs Act. It would be impermissible to read

any words into the definition of a foreign going vessel or to substitute the words territorial waters of India with any other words. The effect of the High Court Judgment and the Respondents submissions is to substitute the words territorial waters of India with the words territory of India/ continental shelf of India/India in sub-clause (ii) of Section 2(21). Such an exercise is impermissible in law, particularly, in the case of a fiscal State. The subject vessels are foreign going vessels and fall within the plain language and meaning of the definition in Section 2(21) of the Customs Act.

45. That since, there has been no change in the definition of the expression foreign-going vessel in the Customs Act, and this definition continues to utilize the expression outside the territorial waters of India, the mere fact that the provisions of the Customs Act have been extended to the continental shelf and exclusive economic zone makes no difference to the Appellants entitlement for exemption from payment of duty. The mere applicability of the provisions of the Customs Act, 1962 to the continental shelf and exclusive economic zone does not mean that the continental shelf and exclusive economic zone become a part of the territory of India. It only means that the provisions of Customs Act including the exemptions contained in Section 86(2) read with Section 87 and Section 2(21), would apply. The Appellants do not dispute that the Customs Act is applicable to the continental shelf and the exclusive economic zone. Indeed, the Appellants are seeking to avail of the benefit of the exemptions contained in Section 86(2) read with Section 87 and Section 2(21). The notification issued under the Maritime Zones Act, 1976, extending the operation of the Customs Act to the continental shelf and the exclusive economic zone does not militate against the Appellants enjoying the benefits of these provisions. That it was open to the Central Government under Sections 6(6) and 7(7) of the Maritime Zones Act, 1976, to extend the Customs Act to the continental shelf and exclusive economic zone with such restrictions and modifications as it thinks fit. For instance, the Central Government could have excluded the applicability of the provisions of Sections 86(2) and 87 to the continental shelf and exclusive economic zone. However, the Customs Act has been extended to the continental shelf and exclusive economic zone without any restrictions or modifications. Hence, all provisions of the Customs Act, including the exemptions contained in Sections 86(2) and 87 read with Section 2(21), fully apply.

46. It is further submitted that the very fact that the Customs Act was made applicable to the continental shelf and the exclusive economic zone itself demonstrates that the continental shelf and the exclusive economic zone do not, and in fact cannot, form part of the territory of India. If the continental shelf and the exclusive economic zone were part of the territory of India, the Customs Act would per se be applicable and there was no need to extend the Customs Act, by a notification under the Maritime Zones Act, 1976.

47. That none of the notifications issued under the provisions of Sections 6(6) and 7(7) of the Maritime Zones Act, 1976 purports to extend the limits of the territorial waters. The territorial waters limit remains at 12 nautical miles and the limited sovereignty which can be exercised therein for the purposes of exploration and exploitation of resources does not result in the definition or meaning of territorial waters of India or foreign going vessel being changed. According to him, the Appellants vessels would continue to be entitled to be

classified as such and claim exemptions contained in the Customs Act as a consequence thereof.

48. That there is a clear distinction between the concept of (i) the territory of India and (ii) the deeming provisions regarding the extension of an enactment to designated areas and such areas being deemed to be a territory of India for the purposes of extension of law. In the former case, the territory of India is circumscribed by Article 1(3) of the Constitution. The designated areas are not the territory of India and do not fall under any of the clauses of Article 1(3). Apart from the Constitution not treating the designated areas as a part of the territory of India, such a notion would also run counter to India's international obligations under UNCLOS, 1982. UNCLOS, 1982 does not contain any provision which enables a party State to assert full sovereignty over the continental shelf or the exclusive economic zone as being part of the territory of that State. The right to exclusively exploit and enjoy resources in an area is very different from an area being the territory of the State. If the continental shelf and the exclusive economic zone are treated as being a territory of India, it would amount to annexation of international waters/territory into the territory of India. This would have wide international ramifications and would be contrary to the principles of international law.

#### CONTENTIONS ON BEHALF OF THE RESPONDENTS

49. Learned Senior Counsel Shri V. Shekhar, appearing for the Union of India submitted that the oil rig is stationed at a designated area in the continental shelf/exclusive economic zone. The designated area is within the territorial limits of the Coastal State (country). The maritime limit of the Coastal State would include territorial waters, continental shelf and exclusive economic zone, as recognized under the International Convention on the Law of the Sea including rights, exclusive jurisdiction and duties of the Coastal State with regard to the customs, fiscal, safety, health, immigration laws and regulations. For this, he made a reference to Articles 56, 60, 77, 80 of the UNCLOS, 1982. It is submitted that pursuant to such recognition of the territorial limit in the Comity of Nations, the Coastal States have the power to legislate or take such appropriate measures to exercise its sovereign power over that territorial limit. It is further contended that Maritime Zones Act, 1976 was enacted in pursuance to such recognition. Notifications were also issued pursuant to such recognition and the Customs Act and the Customs Tariff Act were extended to the designated area of the continental shelf and exclusive economic zone. There is no challenge to the Maritime Zones Act, 1976 the various notifications issued declaring designated areas as well as extending the Customs Act as being ultra vires or that its provisions are contrary to the provisions of other enactments.

50. The Coastal State has sovereignty over territorial waters. But it has only sovereign rights over the continental shelf and the exclusive economic zone.

51. The Customs Act extends to the whole of India and not simply to the territorial waters of India. Customs Act has no provision permitting determination of the maritime limit. For this purpose, one has to revert to the Maritime Zones Act, 1976. Hence, reference to the Maritime

Zones Act, 1976 is inevitable, while considering any issue relating to maritime issues at that time.

That Section 2(21) of the Customs Act cannot be read in isolation. The entire schemes of the Customs Act and other Acts which are in pari-materia have to be read together.

52. It was submitted that the Appellants vessel may be a foreign going vessel, and may be carrying its operations outside the territorial waters (the term as understood under Section 3 of the Maritime Zones Act, 1976). Nevertheless, for all purposes, it is within the limit where the Coastal State has a sovereign right or power to enact or extend any law, and the exemption to a foreign going vessel will not be available under Sections 86 and 87 of the Customs Act.

53. Refuting the submissions advanced on behalf of the Appellants, it was submitted that the limit of the territorial waters is not extended. It is only the extension of the sovereign power over an area which is recognized as the maritime limit of the Coastal State which was being exercised.

54. That it has been clarified that Indias jurisdiction under the Maritime Zones Act, 1976 extends to the continental shelf and exclusive economic zone. Consequently, if mineral oil is extracted or produced in the exclusive economic zone or continental shelf and is brought to the main land, it will not be treated as import and, therefore, no customs duty would be leviable. Likewise, goods supplied to a place in exclusive economic zone or continental shelf will not be treated as export under the Customs Act and no export benefit can be availed on such supply. Any mineral oil produced in the exclusive economic zone or continental shelf will be chargeable to Central Excise duty, as goods produced in India. For this, learned Senior Counsel for the Respondents relied on Circular No. 17/2002 Cus. Dated 13.3.2002 [2002 (141) ELT T10] and MF (DR) Circular No. 22/2002 Cus. dated 23.04.2002 [2002 (142) ELT T20].

55. It is further contented that what is required to be seen is not whether it is a foreign going vessel or it has moved out of the territorial waters (Section 2(21) of the Customs Act/Section 3 of the Maritime Zones Act, 1976), but to find whether it is within the maritime boundary/Customs Act which stand extended. Anything loaded or unloaded within that boundary would mean there is an import or export as contemplated under the Customs Act.

56. That it would be incorrect to contend that the oil rigs installed by the Appellants answer the description foreign going vessel. A vessel may be a foreign going vessel but if the oil rig is situated in an area which is within the limits to which the Customs Act applies or extends and if any storeis consumed at a site within the area to which the Customs Act applies, then one cannot take the aid of Section 2(21) of the Customs Act to take the benefit under Sections 86 and 87 of the same Act.

57. The fact that even if the oil rig is accepted as a vessel which carries on its operation in an area over which coastal State exercises limited sovereign rights and to which the Indian

Customs Act applies, then, the customs duty would be leviable on the stores consumed on the vessel.

58. That there is neither an ambiguity nor the interpretation of the Court in *Pride Foramers* case (*supra*) would result in absurd situation. The Appellant wants the Court to read Section 2(21) of the Customs Act in isolation, which is not the correct approach. There is neither any substitution nor any attempt to read any provision of the Customs Act in a manner contrary to the intent and purport of the Act. The fact remains that even if it is a foreign going vessel, the stores are unloaded and consumed within the maritime boundary or within the limit of Customs Act, Section 12 will be attracted as it would be construed that there has been an import within the territory of India to which the Customs Act applies.

59. Refuting the contention of the Appellants that an attempt is being made to substitute the phrase appearing in the Customs Act contrary to its intention, it is submitted, has no basis. What the Appellants want is that for the present adjudication or cause, the Court should not look beyond Sections 2(21), 86 and 87 of the Customs Act and that it should not look into the other Acts. This may not be the right approach as it would undermine the power of the Parliament and the provisions of the Maritime Zones Act, 1976 would be rendered meaningless.

## FINDINGS

60. The Customs Act is an Act to consolidate and amend the law relating to customs. In order to appreciate the contentions raised, it is necessary to refer to several steps required to be taken under the Customs Act for levy of duty on goods imported into India. Chapter V of the Customs Act deals with levy of and exemption from customs duty. Section 12 is the charging Section. Under this Section, all the goods imported into India or exported from India are liable to customs duty unless the Customs Act itself or any other law for the time being in force provides otherwise. The goods imported are required to be valued under Section 14 and duty payable is required to be determined according to the rates specified under Section 15 of the Customs Act or any other law for the time being in force. Although before the High Court, the Appellant had claimed the exemption from payment of duty under Section 53 read with Section 54 of the Customs Act, but the same was not pressed into service before us, in our view, rightly because Section 52 in Chapter VIII specifically provides that the provisions of Chapter VIII shall not apply to (a) baggage, (b) goods imported by posts and (c) stores. Admittedly, the goods imported by the Appellant are stores for use in a vessel or aircraft falling within the definition of stores in Section 2(38).

61. The only argument pressed before us is that the goods would be exempted from payment of duty in terms of the provisions of Chapter XI which contains the special provisions regarding (a) baggage, (b) goods imported or exported by posts and (c) stores. Section 85 in Chapter XI provides that where the imported goods are entered for warehousing and the importer subscribes to a declaration that the goods are to be supplied as stores to a vessel or aircraft without payment of duty under Chapter XI, then, the proper officer may permit the goods to be warehoused without the goods being assessed to duty. Section 86(1) provides

that stores imported in a vessel or aircraft, may, without payment of duty, remain on board of such vessel or aircraft while it is in India. Section 86(2) inter alia provides that any stores imported in a vessel or aircraft may, with the permission of the proper officer, be transferred to any vessel or aircraft as stores for consumption therein as provided in Section 87, which inter alia provides that imported stores may, without payment of duty be consumed on the vessel as stores during the period such vessel is a foreign going vessel.

62. Applicability of Section 86 read with Section 87 depends upon the answer to the question: Whether the oil rig operating in the designated area is a foreign going vessel? Thus, entire issue centers around the interpretation of Section 2(21) of the Customs Act, which defines the foreign going vessel to mean any vessel engaged in the carriage of goods or passengers between any port in India and any port outside India whether adjoining any intermediate port or airport in India or not and it amongst others also includes vessel engaged in fishing or any other operations outside territorial waters of India, or, any vessel proceeding to a place outside India for any purpose whatsoever.

63. Contention advanced on behalf of the Appellant is that the oil rigs which are located in the exclusive economic zones and are beyond the territorial waters of India, would fall outside the territory of India and, therefore, the stores consumed on the oil rigs would be deemed to have been consumed by a foreign going vessel.

64. Section 2 which is a definition Section, opens with the qualifying words unless the context otherwise requires which shall mean or include all things or situations and it shall not be open to the Court to give any other meaning to those words except when the context otherwise requires. In this background, we have to examine the meaning of the word India in the light of the provisions of law, i.e., keeping in view the provisions of Customs Act read with Maritime Zones Act, 1976 as the provisions thereof are applicable to the facts of the present case. Under Section 2(27), India includes the territorial waters of India. Under the General Clauses Act, India is defined to mean all territories for the time being comprised in the territory of India as defined in the Constitution of India. Article 1(3) of the Constitution of India states that the territory of India shall comprise of States and Union Territories and such other territories as may be acquired. There is no reference to territorial waters in Article 1 of the Constitution. In other words, India commonly understood is the geographical entity comprising only of the land mass. For certain purposes, the country referred to as India may extend into the sea upto the limit of territorial waters or contiguous zone or continental shelf or exclusive economic zone or other maritime zones.

65. Under the provisions of Article 297 of the Constitution of India, all lands, minerals and other things of value underlying the ocean within the territorial waters or the continental shelf or the exclusive economic zone of India vest in the Union. The Constitution of India does not itself define the terms territorial waters, continental shelf, and exclusive economic zone. Clause (3) of Article 297 states that their limits shall be such as may be specified by Parliament. In 1976, Parliament implemented the amendments to the Constitution of India by passing the Maritime Zones Act, 1976.

66. Section 3 of the Maritime Zones Act, 1976 provides that the sovereignty of India extends and has always extended to the territorial waters of India and to the seabed and subsoil underlying, and the air space over such waters. The limit of territorial waters extends to 12 nautical miles from the nearest point of low tide along with the base line of India. Section 3(2) states that the sovereignty of India extends and has always extended to the territorial waters of India. Section 4 makes the position clear further as to the use of its territorial waters by foreign ships, i.e., all foreign ships (other than warships including sub-marine and under water vehicles) shall enjoy the right of innocent passage through the territorial waters which in turn means, the passage will be innocent so long as it is not prejudicial to the peace, good order or security of India. Section 5 defines the contiguous zone of India as that part of the sea which is beyond and adjacent to the territorial waters and the zone extends to a line which is 24 nautical miles of the coast. This Section specifically recognizes the competence of the Central Government to exercise such powers and take such measures as to consider necessary with respect (a) the security of India, and (b) immigration, sanitation, customs and other fiscal matters. Under Section 6(1) of the said Act, the continental shelf of India extends to a distance of 200 nautical miles from the baseline referred to in sub-section (2) of Section 3 where the outer edge of the continental margin does not extend upto that distance. Section 6(2) provides that India has and always had full and exclusive sovereign rights in respect of continental shelf. Section 6(5) reserves the right with the Central Government to declare any area of the continental shelf and its superjacent waters to be a designated area by issuing a notification and make such provision as it may deem fit with respect to - (a) the exploration, exploitation and protection of the resources of the continental shelf within such designated area; or (b) the safety and protection of artificial islands, of shore terminals, installations and other structures and devices in such designated area; or (c) the protection of marine environment of such designated area; or (d) customs, and other fiscal matters in relation to such designated area. Section 6(6) enables the Central Government by notification in the Official Gazette to extend, with such restrictions and modifications as it thinks fit, any enactment for the time being in force in India or any part thereof to the continental shelf or any part [including any designated area under sub-section (5)] thereof; and to make such provisions as it may consider necessary for facilitating the enforcement of such enactment. It, however, provides that any enactment so extended shall have effect as if the continental shelf or the part [including, as the case may be, any designated area under sub-section (5)] thereof to which it has been extended is a part of the territory of India.

67. Section 7(1) describes the exclusive economic zone of India as an area beyond and adjacent to the territorial waters, and the limit of such zone is 200 (two hundred) nautical miles from the baseline referred to in sub-section (2) of Section 3. Under sub-section 7 of Section 7, the Central Government may by notification in the Official Gazette extend, with such restrictions and modifications as it thinks fit, any enactment for the time being in force in India or any part thereof in the exclusive economic zone or any part thereof.

68. A combined reading of Sections 3, 6 and 7 of the Maritime Zones Act, 1976 shows that territorial waters, the seabed and subsoil underlying therein and the air space over such territorial waters form part of the territory of India. Sovereignty of India extends over the territorial waters but the position is different in the case of continental shelf and exclusive

economic zone of India. The continental shelf of India comprises of the seabed beyond the territorial waters to a distance of 200 nautical miles. The exclusive economic zone represents the sea or waters over that continental shelf. From the reading of Sections 6 and 7 of the Maritime Zones Act, 1976, it is clear that in respect of the continental shelf and exclusive economic zone, India has been given only certain limited sovereign rights and such limited sovereign rights conferred on India in respect of continental and exclusive economic zone cannot be equated to extending the sovereignty of India over the continental shelf and exclusive economic zone as in the case of territorial waters. Sub-section (6) of section 6 and sub-section (7) of Section 7 of the Maritime Zones Act, 1976 empower the Central Government by notification to extend any enactment in force in India with such restrictions and modifications which it thinks fit to the continental shelf and the exclusive economic zone and further provides that an enactment so extended shall have effect as if the continental shelf or the exclusive economic zone to which the enactment has been extended is a part of the territory of India. Thus, sub-section (6) of Section 6 and sub-section (7) of Section 7 create a fiction by which the continental shelf and the exclusive economic zone deemed to be a part of India for the purposes of such enactments which are extended to those areas by the Central Government by issuing a notification.

69. In exercise of the powers vested in the Central Government under sub-section (6) of Section 6 and sub-section (7) of Section 7 of the Maritime Zones Act, 1976, the Government extended the Customs Act, 1962 and the Customs Tariff Act, 1976 to the designated areas of the continental shelf and the exclusive economic zone by notification published in the Official Gazette referred to and reproduced in paragraphs 30 to 33.

70. It may be noted that Indian position is consistent with the mandate of international law United Nations Convention on the Law of Sea, 1982 (UNCLOS, 1982) dated 07.10.1982 which has been signed by India as a member of the United Nations. Under UNCLOS, 1982, the territorial sovereignty of the coastal State extends beyond the land territory only upto the outer limits of the territorial sea which is equivalent to the expression in the Maritime Zones Act, 1976. Territorial waters extend upto 12 nautical miles from the low water mark line of the coast (base line) which is consistent with the UNCLOS, 1982. Under sub-section (28) of Section 2, Indian customs water extends seaward up to the limit of the contiguous zone, namely, a jurisdictional zone adjoining the territorial sea and encompassing the stretch of sea waters upto a distance of 12 nautical miles beyond the territorial waters (which means 24 nautical miles from appropriate baseline). The coastal State has no sovereignty in territorial sense of dominium over the contiguous zone, but it exercises sovereign rights for the purpose of exploring the continental shelf and exploiting its natural resources. It has jurisdiction to enforce its fiscal, revenue and penal laws by intercepting vessels engaged in suspected smuggling or the other illegal activities attributable to a violation of the above laws or the existing laws. Undoubtedly, the waters which extend beyond the contiguous zone are traditionally the domain of the high seas or open sea which have, juristically speaking, the status of international waters where all States enjoy traditional high seas freedoms including freedom of navigation. The coastal States can exercise their right of search, seizure or confiscation of vessel for violation of its customs or fiscal or penal laws in the contiguous zone but it cannot exercise these rights once the delinquent vessel enters the high seas. It has

no right of hot pursuit except where the vessel is engaged in piratical acts which are liable for arrest and condemnation within the sea for the jurisdiction over piracy since historical times has been recognized as universal in international law and any State may exercise that jurisdiction over a pirate irrespective of the usual considerations of territoriality which limit the penal jurisdiction.

71. With the adoption of UNCLOS, 1982, the legal incidents of the high seas have been partly modified. UNCLOS, 1982 is a comprehensive code on the international law of sea. It codifies and consolidates the traditional law within a single, edificatory legal framework. It has changed the legal concept of continental shelf and also introduced a new maritime zone known as exclusive economic zone. Exclusive economic zone is a new concept having several new features. What is significant for our purpose is that the coastal State has in its zone only sovereign rights of exploitation of the resources and not sovereignty in the sense of territoriality or dominium. Exclusiveness attaches to resources exploitation only but does not incorporate the ownership of title of the coastal State.

72. It is a concept of restricted sovereignty linked to the resources sense sans the incidents of territoriality. This is so because, in other respects, the status of the waters in this area as a part of the high seas is specifically recognized and retained in the Convention.

73. In the exclusive economic zone, the coastal State has exclusive right to exploit for economic purposes like constructing artificial islands or other platforms or drilling rigs for oil and mineral exploration and other purposes like fishing, scientific research, etc but the same is subject to the navigation and over-freight rights of non-coastal States.

74. The oil rig is deemed to be stationed at a designated area in the continental shelf/exclusive economic zone. The designated area is within the territorial limits of the coastal State. The maritime limit of the coastal State would include territorial waters, continental shelf and exclusive economic zone, as recognized under the International Convention on the Law of the Sea including rights, exclusive jurisdiction and duties of the coastal State with regard to customs, fiscal safety, health, immigration laws and regulations [See Articles 56, 60, 77, 80 of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS, 1982)].

75 Pursuant to such recognition of the territorial limit in the Comity of Nations, the coastal State has the power to legislate or take such appropriate measures to exercise its sovereign power over that territorial limit. Maritime Zones Act, 1976 was enacted pursuant to such recognition, declaring designated area in the continental shelf/exclusive economic zone and extending the Customs Act to such areas. The notifications referred to in the foregoing paragraphs were issued pursuant to such recognition and the Customs Act and the Customs Tariff Act were extended to the designated area of the continental shelf, exclusive economic zone. There is no challenge to the Maritime Zones Act, 1976, the various notifications issued declaring designated area as well as extending the Customs Act as being ultra vires or that its provisions are contrary to the provisions of other enactments. The coastal State has sovereignty over territorial waters but it has only sovereign rights over the continental shelf

and the exclusive economic zone. The Customs Act extends to the whole of India and not simply to the territorial waters of India. Customs Act does not contain any provision permitting determination of the maritime limits. For this purpose, one has to revert to the Maritime Zones Act, 1976. Hence, reference to the Maritime Zones Act, 1976 is inevitable while considering any issue relating to maritime issues.

76. Appellants may be carrying on its operation outside the territorial waters, as understood under Section 3 of the Maritime Zones Act, 1976. Nevertheless, for all purposes, it is within the limit where the coastal State has a sovereign right or power to enact or extend any law, and the advantage to a foreign going vessel will not be available under Sections 86 and 87 of the Customs Act to such vessels.

77. The Counsel for the Appellants may be right in contending that the limits of the territorial waters has not been extended. The limits of territorial waters as defined in Section 3 of the Maritime Zones Act, 1976 has not been extended but under Sections 6 and 7 thereof, sovereign rights can be exercised by the coastal States on a area which is recognized as the maritime limit of the coastal State which is being exercised. Section 2(21) of the Customs Act cannot be read in isolation. The entire scheme of the Customs Act and other Acts such as Maritime Zones Act, 1976 which are in pari-materia have to be read together. Reading of Sections 6 and 7 of the Maritime Zones Act, 1976 makes it clear India's jurisdiction over the Maritime Zones Act, 1976 extends to the continental shelf and exclusive economic zone. Consequently, if mineral oil is extracted or produced in the exclusive economic zone or continental shelf and is brought to the main land, it will not be treated as import and, therefore, no customs duty would be leviable. Likewise, goods supplied to a place in the exclusive economic zone or continental shelf will not be treated as export under the Customs Act and no export benefit can be availed on such supply. Any mineral oil produced in the exclusive economic zone or continental shelf will be chargeable to Central Excise Duty, as goods produced in India. Implication of notification no. S.O. 189 (E) dated 07.02.2002 and its consequences have been clarified in Circular No. 17/2002-Customs dated 13.03.2002 [2002 (141) ELT T10] in following terms:

3. The implication of the said notification is that mineral oils extracted or produced in the EEZ and Continental Shelf of India if brought to the mainland shall not be treated as import and therefore, no customs duty shall be leviable on such mineral oils. Likewise, the goods supplied from the mainland to a place in EEZ or Continental Shelf of India in connection with any activity related to mineral oil extraction or production shall not be treated as export under the Customs Act, 1962 and consequently, no export benefits can be availed of on such supplies. Another implication of the said notification is that bringing of any goods from any other country to any place in EEZ or Continental Shelf of India in connection with any activity related to extraction or production of mineral oils shall be treated as import under the Customs Act, 1962 and would be charged to duty accordingly. Further, mineral oils produced in the EEZ or Continental Shelf of India would be deemed to be produced in India and subject to levy of central excise duties under the Central Excise Act, 1944.

78. Similarly, in Circular No. 22/2002 dated 23.04.2002 [2002(142) ELT T20], the said notification i.e. S.O. 189 (E) has been clarified in para 3 as under: -

3. The implication of the said notification is that mineral oils extracted or produced in the EEZ and Continental Shelf of India if brought to the mainland shall not be treated as import and therefore, no customs duty shall be leviable on such mineral oils. Likewise, the goods supplied from the mainland to a place in EEZ or Continental Shelf of India in connection with any activity related to mineral oil extraction or production shall not be treated as export under the Customs Act, 1962 and consequently, no export benefits can be availed of on such supplies. Another implication of the said notification is that bringing of any goods from any other country to any place in EEZ or Continental Shelf of India in connection with any activity related to extraction or production of mineral oils shall be treated as import under the Customs Act, 1962 and would be charged to duty accordingly.

79. It may not be correct to contend that the oil rigs installed by the Appellants answer the description foreign going vessel. A vessel may be a foreign going vessel but if the oil rig is situated in the area to which the Customs Act applies or extends, the aid of Section 2(21) of the Customs Act cannot be taken to get the benefit under Sections 86 and 87 of the same Act. The principle underlying under Sections 86 and 87 is that the stores are consumed on board by a foreign going vessel. If the so-called foreign going vessel is located within a territory over which the coastal State has complete control and has sovereign right to extend its fiscal laws to such an area with or without modifications and the stores were consumed in the area to which the Customs Act has been extended, reference or reliance to the vessel being a foreign going vessel shall be of no consequence and the customs duty would be leviable as the goods are consumed within the territory to which the Customs Act has been extended as per the Maritime Zones Act, 1976 and the International Convention UNCLOS, 1982.

80. We do not find any ambiguity in this situation. The interpretation given by the High Court in *Pride Foramers* case (supra) would not result in any absurd situation as contended by the Counsel for the Appellant. The Appellants want the Court to read Section 2(21) of the Customs Act in isolation, which would not be the correct approach. The Customs Act has to be read along with the provisions of the Maritime Zones Act, 1976.

81. The contention of the Appellants that an attempt is being made to substitute the phrase appearing in the Customs Act contrary to its intent is without any basis. What the Appellants want is that, for the present adjudication or case, the Court should not look beyond Sections 2(21), 86 and 87 of the Customs Act and that it should not look into the other Acts. This may not be the right approach as it would result in undermining the power of the Parliament to enact laws as well as to render the provisions of Maritime Zones Act, 1976 nugatory and meaningless.

82. The fact that the stores are unloaded and consumed within the maritime boundary or within the limit of Customs Act, Section 12 will be attracted as it would be construed that there would have been an import within the territory of India to which the Customs Act applies.

83. A Division Bench of Madras High Court in *Commissioner of Income Tax v. Ronald William Trikard and Others*<sup>5</sup> after considering Article 1 and Article 297 of the Constitution of India, the provisions of the Maritime Zones Act, 1976 and the provisions of the Income Tax Act which had been extended in the same way as has been extended in a similar manner as the Customs Act, came to the conclusion that the salary received by the assesses for the services rendered in India while working on the continental shelf/exclusive economic zone and other maritime zones shall be liable to tax under the Income Tax Act after the issuance of the notifications, extended the applicability of the Income Tax Act to the continental shelf and exclusive economic zones. Though in the said case, it was held that the salary income earned by the assessee prior to 01.04.1983 could not be charged to tax in the assessment year 1983-84 as the continental shelf and exclusive economic zone were not part of India prior to the issuance of the notifications by the Government of India extending the applicability of the Income Tax Act to continental shelf and exclusive economic zones. In the said case, the facts were, that the assessee were employees, during the assessment year 1983-84, of a non-resident company incorporated under the law of Panama. The non-resident company entered into a contract with the Oil and Natural Gas Commission of India for exploring oil in the seas which adjoined the territories of India. The area of operation was to be the seas above the continental shelf of India. The assessee carried on their employment on the oil rig operated on the seas above the continental shelf. Question arose whether the income earned by the assessee while working on the oil rig which was located above the continental shelf would be eligible to the Income Tax Act, 1961. It was held that in view of the explanation to Section 9(1)(ii) of the Income Tax Act, 1961, read with Government of India's notification G.S.R. No. 304(E), File No. 5147/F. No. 133(79)/82 TPL dated 31.03.1983, issued under the Maritime Zones Act, 1976, the salary received by the assessee for the services rendered in India became liable to tax under the Income Tax Act. However, in the said case, on facts, it was held that the salary income earned by the assessee prior to 01.04.1983 could not be charged to tax under the provisions of the Income Tax Act, 1961 in the assessment year 1983-84 as the operation of the notification extending the provisions of Income Tax Act were not retrospective in nature. In substance, to the similar effect is the Judgment of the Bombay High Court in *MCDERMOTT International Inc. v. Union of India & Others*<sup>6</sup>

84. We agree with the views expressed by the Bombay High Court in *Pride Foramers* case (supra) that in *Amership Management* case (supra), the High Court of Bombay was concerned with the limited question as to whether the oil rigs are vessels and if so a foreign going vessel in the light of the controversy raised in that Judgment. In *Amership Management* case (supra), the High Court after relying on the International Load Lines Convention, 1966 and Central Government Notifications and upon the load lines certificates, held for the purposes of the Customs Act, the expression vessel is of the widest amplitude and must be construed to include oil rigs. It was held that since the oil rigs are stationed beyond the territorial waters, supply of imported store to the oil rigs stationed outside the territorial waters would qualify for exemption from duty under Section 86 without being required to be warehoused. The question with respect to the applicability of Sections 6 and 7 of the Maritime Zones Act, 1976 together with the notifications issued pursuant thereto were not considered at all.

85. By notification S.O. 429 (E) dated 18.07.1986, and notification S.O. 643 (E) dated 19.09.1996, issued under clause (a) of sub-section (5) of Section 6 and clause (a) of sub-section (6) of Section 7 of the Maritime Zones Act, 1976, the Ministry of External Affairs has declared certain areas in the continental shelf or, in the exclusive economic zone of India, where certain installations, structures and platforms of certain coordinates given in the Schedule are situated and the areas extending upto 500 meters from such installations, structures and platforms as

Designated areas for the purposes of Sections 6 and 7 of the Maritime Zones Act, 1976. The Ministry of Finance (Department of Revenue) by two corresponding notifications no. 11/87-Customs dated 14.01.1987 and 64/97-Customs dated 01.12.1997 issued under clause (a) of sub-section (6) of Section 6 and clause (a) of sub-section (7) of Section 7 of the Maritime Zones Act, 1976 have extended the Customs Act and Customs Tariff Act to the aforesaid designated areas in the continental shelf and the exclusive economic zone as declared in the notifications issued by the Ministry of External Affairs on 18.07.1986 and 19.09.1996. The combined effect of these notifications is to extend the application of the Customs Act and the Customs Tariff Act to the aforesaid areas declared as designated areas under the Maritime Zones Act, 1976. The further effect of these notifications is that the designated areas of the continental shelf and the exclusive economic zone become a part of the territory of India for limited purposes. The natural consequence of such declarations and the extension of the Customs Act and the Customs Tariff Act to these designated areas is to introduce the customs regime to such areas resulting in the levy and collection of customs duties on goods imported into these areas as if these areas are a part of the territory of India. In these circumstances, the definition of India as given in Section 2(27) of the Customs Act gets extended by these provisions to cover areas declared as designated areas beyond the territorial waters and located the continental shelf and the exclusive economic zone of India. If one reads the Customs Act without reading the Maritime Zones Act, 1976, then the oil rig located in the notified areas/designated areas constitute place outside India. On the other hand, the very purpose of Sections 5, 6 and 7 of the Maritime Zones Act, 1976 is to declare an area of the contiguous zone/continental shelf/exclusive economic zone as a designated area so that exploration, exploitation and protection of resources belonging to India could be carried out. Under the said Act, the Central Government can create artificial island, offshore terminals, etc. By the said Act, customs and other fiscal enactments have been extended. Therefore, the object is very clear that the revenue generated from exploration and exploitation should accrue to the coastal State viz. India. As stated above, the area of exclusive economic zone/continental shelf, where the oil rigs are stationed (which of course is outside territorial waters) is deemed to be a part of the territory of India under the Central Government notifications issued pursuant to the provisions of the Maritime Zones Act, 1976. The supply of imported spares or goods or equipments to the rigs by a ship will attract import duty and the ship employed for transshipment of the goods for that purpose would not be a foreign going vessel under Section 2(21) of the Customs Act. The area of discharge or unloading/loading is within India by virtue of the deeming provisions of Sections 6 and 7 of the Maritime Zones Act, 1976. The Customs Act stands extended to the designated areas by virtue of the Maritime Zones Act, 1976. The oil rigs carrying on operations in the designated

area are not a foreign going vessel as the same would be deemed to be a part of Indian territory i.e. going from the territory of India to an area which also deemed to be part of the territory of India.

86. As stated above, contiguous zone is that part of the sea which is beyond and adjacent to the territorial waters of the coastal States. The coastal States though do not exercise sovereignty over this part of the sea, however, they are entitled to exercise sovereign rights and take appropriate steps to protect its revenue and like matters. The police and revenue jurisdiction of the coastal States is extended to the contiguous zone as well.

87. The question whether the Courts can look into the provisions of the international treaties/conventions is no longer *res integra*. This Court in *Gramophone Company of India Ltd. v. Birendra Bahadur case*<sup>7</sup> has held that even in the absence of municipal law, the treaties/conventions can be looked into and enforced if they are not in conflict with the municipal law. It was further held that the same may not be looked into but can also be used to interpret municipal laws so as to bring them in consonance with international law.

88. However, in the event where they do not run into such conflict, the sovereignty and the integrity of the republic and the supremacy of the constituted legislatures in making the laws may not be subject to external rules except to the extent legitimately accepted by the constituted legislatures themselves. The Court held as under: -

“The doctrine of incorporation also recognise the position that the rules of international law are incorporated into national law and considered to be part of the national law, unless they are in conflict with an Act of Parliament. Comity of Nations or no, Municipal Law must prevail in case of conflict. National Courts cannot say yes if Parliament has said no to a principle of international law. National Courts will endorse international law but not if it conflicts with national law. National courts being organs of the National State and not organs of international law must perforce apply national law if international law conflicts with it. But the Courts are under an obligation within legitimate limits, to so interpret the Municipal Statute as to avoid confrontation with the comity of Nations or the well established principles of International law. But if conflict is inevitable, the latter must yield.”

89. In *Vishaka & others v. State of Rajasthan & others*<sup>8</sup> this Court considered the question as to what would be the position in law if there was no law for effective enforcement. It was held as under: -

“The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them.”

90. Our municipal law, i.e., Maritime Zones Act, 1976 is not in conflict with the international law, rather the same is in consonance with UNCLOS, 1982.

91. Article 127 of UNCLOS, 1982 deals with customs duties, taxes and other charges. Clause (1) provides that traffic in transit shall not be subject to any customs duties, taxes or other charges except charges levied for specific services rendered in connection with such traffic and Clause (2) provides that means of transport in transit and other facilities provided for and used by the land locked States shall not subject to taxes or charges higher than those levied for the use of means of transport of the transit State. According to this Article, where the goods are in transit to other country shall not be subject to any customs duties, taxes or other charges except for the charges levied for specific services in connection with such traffic. In other words, there is no prohibition for levying customs duties on the goods which are not in transit for onward transmission to any other country. If the goods are brought in only while proceeding to other country, then no customs duty can be levied. In all other cases, it seems to be permissible.

92. In the present case, as the goods were being taken to a territory which would be deemed to be a part of the territory of India though the goods have left the territorial waters, the same would be eligible to levy of duty when they are taken and consumed within the deemed territory of India. There would be no customs duty or any other duty levied while the goods are in transit to the deemed territory of India by any other country although they have gone out of the territorial waters of India.

93. For the reasons stated above, we do not find any merit in these appeals and dismiss the same with costs.

Judgment Referred.

<sup>1</sup>(1996) 86 ELT 12 (Bom)

<sup>2</sup>(2002) 148 ELT 19 (Bom)

<sup>3</sup>C.A.No. 6148/2002

<sup>4</sup>(C.A.No. 2236/2002

<sup>5</sup>215 ITR 0638

<sup>6</sup>(1988) (173) ITR 0155 (Bom.)

<sup>7</sup>(1984) 2 SCC 0534

<sup>8</sup>(1997) 6 SCC 0241