2025:KER:31154

"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE D. K. SINGH

THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947

WP(C) NO. 1992 OF 2021

PETITIONER/S:

GAC SHIPPING (INDIA) PRIVATE LIMITED
GAC HOUSE, P.B NO. 515 SUBRAMANIAN ROAD, WILLINGDON ISLAND, COCHIN 682 003,
REPRESENTED BY ITS MANAGER (OPERATIONS) M.G SAJINATH

BY ADVS.
P.F.ROSY
SNEHA RAJIV
P.DEEPAK (SR.)(K/175/1996)

RESPONDENT/S:

1 UNION OF INDIA
REPRESENTED BY ITS SECRETARY, MINISTRY OF SHIPPING, ROAD TRANSPORT AND HIGHWAYS, NEW DELHI 110 001

2 TARIFF AUTHORITY FOR MAJOR PORTS (TAMP FOR SHORT)
4TH FLOOR, BHANDAR BHAVAN, M.P ROAD, MAZAGON, MUMBAI 400 010

3 BOARD OF TRUSTEES,
COCHIN PORT TRUST, PORT TRUST OFFICE, WILLINGDON ISLAND, ERNAKULAM 682 009 REPRESENTED BY THE CHAIRMAN

4 THE CHAIRMAN, COCHIN PORT TRUST, PORT TRUST OFFICE, WILLINGDON ISLAND, ERNAKULAM 682 009

ADDL 5 COCHIN PORT AUTHORITY
WILLINGDON ISLAND, KOCHI - 682 009, KERALA REPRESENTED BY ITS CHAIRPERSON

ADDL 6 THE CHAIRPERSON
COCHIN PORT AUTHORITY, WILLINGDON ISLAND, KOCHI, KERALA 682 009

[ADDL.R5 & ADDL.R6 ARE IMPLEADED AS PER ORDER DATED 20.11.2024 IN I.A.1/2024 IN WP(C)1992/2021].

BY ADVS. T C KRISHNA DSGI
SRI.N.S.DAYA SINDHU SHREE HARI
SRI.M.GOPIKRISHNAN NAMBIAR
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS
SRI.RAJA KANNAN
PAULOSE C. ABRAHAM(MAH/58/2006)

THIS WRIT PETITION (CIVIL) HAVING RESERVED ON 19.03.2025, THE COURT ON 10.04.2025 DELIVERED THE FOLLOWING:

JUDGMENT

**"C.R."**

Heard Mr P Deepak learned Senior Counsel assisted by Ms Sneha Rajiv learned for the petitioner, and Mr Daya Sindhu Sreehari learned Central Government Counsel, Ms T C Krishna learned DSGI and Mr Poulose C Abraham learned Counsel for the Cochin Port Trust.

***Facts*:**

2. The petitioner is a streamer agent for foreign vessels calling at the major ports in the Country including Cochin Port. During the months of April and May 2020, three foreign vessels, namely MT DELTS SKY, MT DHT FALCON and MT EVRIDIKI, were called at the Cochin Port under the petitioner's agency. The invoices dated 13.04.2020, 05.05.2020, and 21.05.2020 were raised by the Cochin Port Trust (CoPT) for various vessel-related charges, including port dues, towage, pilotage etc. The amount demanded under the three invoices was remitted in full by the petitioner, and the vessels were allowed to sail after the following

endorsement made in the three invoices, namely-

"*No final bill against this VCN. This may be treated as final bill*"

2. Later, three invoices dated 04.07.2020 were served on the petitioner demanding "*anchorage charges*" in respect of the three vessels in question. The anchorage charges were raised on the strength of the Trade Circular issued by the Chairman, CoPT, dated 04.07.2020. The circular dated 04.07.2020 issued by the 3rd respondent would read as follows:

> "Prevent the anchorage charges are being levied by the Port as per para 2.3.3 and 2.3.4 of Scale of Rates of CoPT.
>
> As approved by Chairman, it has been decided to collect anchorage charges as detailed below with effect from 11.03.2020 on ad-hoc basis:
>
> i) For the vessels calling at Cochin Port and have been allotted non-Port berths or Port berths with no berth hire charges, anchorage charges will be levied as per para 2.3.4 of the Scale of Rates.
>
> ii) In the case of the vessels which have been shifted from berth to anchorage and further sailed from anchorage, the anchorage charges will be levied on the last berth where the vessel was berthed as per para 2.3.3 of the Scale of Rates. If the last berth is a non-Port berth or berth with no berth hire charges, then the anchorage

charges shall be levied as per para 2.3.4 of Scale of Rates.

iii) In case the vessel is shifted from berth to anchorage and then back to berth, then the anchorage charges (post shifting from berth to anchorage) will be levied as per para 2.3.3 of the Scale of Rates applicable to the berth to which the vessel is shifted from anchorage. In the case of vessel shifting to a non-Port berth or a Port berth with no berth hire charges, the anchorage charges as per para 2.3.4 of the Scale of Rates will be applicable.

The above ad-hoc charges are subject to approval of the Tariff Authority for Major Ports."

The three invoices dated 04.07.2020 are under challenge in this writ petition.

3. In compliance with the policy direction issued by the Government of India, the Ministry of Shipping (MoS) under Section 111 of the Major Port Trusts Act, 1963, (for short, 'MPT Act') the Tariff Authority for Major Ports (TAMP) notified the "*Tariff Policy for the Major Port Trust, 2018*", which was published in the Official Gazette on 16.01.2019. The said Tariff Policy came into effect from the date of its issue, *i.e.*, 26.12.2018. Taking into consideration the comments and

suggestions received from Major Port Trusts during the consultation process, the Policy for Determination of Tariff for the Major Port Trusts, 2015, issued by the Ministry of Shipping dated 30.01.2015 was modified and the new Tariff Policy for Major Port Trusts, 2018, was issued.

3.1 Clause 1.3 of the Tariff Policy for Major Port Trusts, 2018, provides that the policy would come into effect from the date of issue and would be applicable for the determination of tariff in major Ports due for revision with effect from 01.04.2019. It shall remain in force till 01.04.2022 unless reviewed earlier or extended by the Government.

4. Section 47A of the MPT Act envisaged the constitution and incorporation of a Tariff Authority for Major Ports. Under Section 48, the Tariff Authority constituted under Section 47A was empowered to frame a scale of rates at which, and a statement of conditions under which, any of the services specified thereunder should be performed by a Board or any other person authorized under Section 42 at or in relation to the port or port approaches. Section 49 empowered the Tariff Authority to

provide for the scale of rates and statement of conditions for the use of property belonging to the Board. Thus, from Section 48 to 51, the Tariff Authority for Major Ports was given powers for laying down (i) the scale of rates for services performed by the Board, (ii) scale of rates and statement of conditions for use of property belonging to the Board, (iii) fees for pilotage and certain other services, (iv) fixation of port dues, (v) consolidated rates for the combination of services, (vi) Port due on vessels in ballast, and (vii) Port due on vessels not discharging or taking in cargo. Section 50C of the MPT Act provided that every notification, declaration, order and regulation of the Authority made in pursuance to the power conferred under the Act should be published in the Official Gazette.

4.1 Section 111 of the MPT Act conferred power on the Central Government to issue directions to the Board and the Authority and every Board shall, in the discharge of its functions under the MPT Act, be bound by such directions on questions of policy as the Central

Government may give in writing from time to time. Section 111 of the MPT Act would read as under:

> "111. **Power of Central Government to issue directions to Board.**-
> (1) Without prejudice to the foregoing provisions of this Chapter, the Authority and every Board shall, in the discharge of its functions under this Act be bound by such directions on questions of policy as the Central Government may give in writing from time to time:
> Provided that the Authority or the Board, as the case may be, shall be given opportunity to express its views before any direction is given under this sub-section.
> (2) The decision of the Central Government whether a question is one of policy or not shall be final."

5. In exercise of the powers conferred under Sections 48, 49 and 50 of the MPT Act, the Tariff Authority for Major Ports notified the revised Scale of Rates (SoR) and Performance Standards disposing of the proposal of the Cochin Port Trust for the general revision of its SoR *vide* notification dated 22.10.2019.

5.1 Clause 1.1 of Chapter I of SoR defines various terms. '*Non-Port Berths*' is defined as any berth other than Port Berths, and '*Port Berths*'

are those listed under the 2.3.1 Schedule of Berth Hire charges and the SPM and LNG berths. '*Single Buoy Mooring (SBM) or Single Point Mooring (SPM)*' are loading buoys anchored offshore and serve as a mooring point for tankers to (off) load gas and/or fluid products.

5.2 Chapter II of the Notification dated 22.10.2019 prescribes vessel-related charges, including Berth Hire Charges, Anchorage Charges, etc. Clause 2.3 prescribes Berth Hire Charges, and the Schedule of berth hire charges for berths is given in clauses 2.3.1 and 2.3.2, which are extracted hereunder:

**2.3.1 Schedule of berth hire charges**

| Sl. No | Name of berths | Rate per GRT per hour | |
|---|---|---|---|
| | | Coastal vessel (in Rs.) | Foreign vessel (in US$) |
| 1 | UTL, SCB, Q2, Q3 | 0.1990 | 0.006271 |
| 2 | Q1, NCB, BTP, Q5, Q6, Q7, Q10 | 0.2191 | 0.116905 |
| 3 | Q8, Q9 | 0.2229 | 0.117021 |
| 4 | Q4, STB, NTB, COT | 0.2290s | 0.007216 |
| 5 | Container Berths at ICTT | 0.2328 | 0.117333 |

**2.3.2 Schedule of Berth Hire Charges for other vessels/ floating crafts/ bodies**

| Sl No. | Particulars | | Rate per GRT per hour or part thereof | |
|---|---|---|---|---|
| | | | Coastal vessel (in Rs.) | Foreign vessel (in US$) |
| 1 | Inland Waterways Barges | | 0.2434 | 0.009104 |
| 2 | Lash Barges: | | | |
| | (i) | Berth hire for occupying any berth | 0.3270 | 0.012233 |
| | (ii) | Fleeting charges when barges wait at fleeting areas | 0.1059 | 0.003996 |
| 3 | Floating Crafts/ bodies | | | |
| | (i) | Occupying port berths | 0.3270 | 0.012233 |
| | (ii) | Not occupying port berths but remaining in port water area | 0.1059 | 0.003996 |

5.3 Similarly anchorage charges for vessels calling for berthing at Cochin Port are provided in clause 2.3.3 and anchorage charges for vessels not calling for berthing at Cochin Port are provided in clause 2.3.4, which are extracted hereunder:

## 2.3.3 Anchorage Charges for vessels calling for berthing at Cochin Port

(Per GRT per hour)

| Sl. No. | Description | Rate |
|---|---|---|
| 1 | Up to 48 hours at anchorage | Free |
| 2 | 48 hours – 96 hours | 10% of berth hire charges * |
| 3 | 96 hours – 144 hours | 15% of berth hire charges * |
| 4 | Beyond 144 hours | 20% of berth hire charges * |

* Berth hire charges shall be the rate applicable to that berth where the vessel is waiting to be berthed.

**Note**: Port can exempt vessels from paying anchorage charges in exceptional circumstances including but not limited to lapses on part of the Port. Any waiver of anchorage charges will require approval from Chairman of the Port or an equivalent authority.

**2.3.4 Anchorage Charges for vessels not calling for berthing at Cochin Port**

| Sl. No. | Description | Coastal vessel (in Rs.) | Foreign vessel (in US$) |
|---|---|---|---|
| 1 | Up to 48 hours at anchorage | Free | Free |
| 2 | 48 hours – 96 hours | 0.0233 | 0.000733 |
| 3 | 96 hours – 144 hours | 0.0349 | 0.001099 |
| 4 | Beyond 144 hours | 0.0466 | 0.001466 |

The above charges are subject to a ceiling limit of 5 months of anchorage charges.

**Note**: Any waiver of anchorage charges will require approval from the Chairman of the Port or an equivalent authority.

5.3.1 The note appended to the berth hire charges prescribes that the berth hire charges shall be collected for the period from berthing to un-berthing of the vessels. The berth hire at double the normal rates would be applicable for research vessels, supply vessels, pleasure yachts, oil rigs and other non-cargo vessels excluding

Passenger Ships, Navy and Coast Guard Ships and Ships and Barges for bunkering. The Note also provides that double the normal berth hire will be applicable on cargo ships idling on the ship's account for 24 hours or more during and after operations. Further, it is provided that no berth hire will be charged on the vessel after the expiry of four hours from the time the vessel signals its readiness to sail and there shall be a penalty equal to one day's berth hire charges for a false signal. Furthermore, the time limit of four hours prescribed for cessation of berth hire shall exclude the ship's waiting period for want of favourable tidal conditions or on account of inclement weather or due to the absence of night navigation facilities.

5.4 A reading of clause 2.3.3 of SoR provided the anchorage charges for vessels calling for berthing at Cochin Port. The anchorage charges levied under this clause in respect of vessels calling for berthing at Cochin Port is a percentage of the berth hire charges. Clause 2.3.4 of SoR deals with anchorage charges for vessels not calling for berthing at

Cochin Port.

6. The three vessels in question had called for berthing at Cochin Port and were berthed at SPM (Single Point Mooring). As mentioned above, the SBM or SPM under sub-clause (xx) of Para 1.1 is a '*Port Berth* and the SPM and LNG berths' but not listed under clause 2.3.1 'Schedule of Berth Hire Charges'. Thus, '*vessels calling for berthing at Cochin Port*' at any one of the port berths mentioned in clause 2.3.1 attracts anchorage charges as per the rate prescribed under clause 2.3.3 whereas the anchorage charges prescribed under clause 2.3.4 would be applicable for '*vessels not calling for berthing at Cochin Port*'.

6.1 The petitioner's vessels are not one of those which called for berthing on the berths mentioned in clause 2.3.1, and, therefore, no anchorage charges were applicable to them under clause 2.3.3. Thus, neither the rates prescribed for anchorage charges under clause 2.3.3 nor clause 2.3.4 could have been applied to collect the anchorage charges. In fact, the anchorage charges were not levied on them.

6.2 The Cochin Port Trust realized this lacuna in the SoR that for the vessels calling for berthing at Cochin Port, which are not berthed on port berths defined in clause 2.3.1, no anchorage charges would be collected from them, inasmuch as the SPM and LNG berths which are included in the definition of 'Port Berths' under Clause (xvii) of clause 1.1 of Chapter I of notification dated 22.10.2019 do not carry berth hire charges unlike the other Port Berths specified in clause 2.3.1 of SoR. Thus, they would not attract the anchorage charges under clause 2.3.3 despite the vessel having called for berthing at Cochin Port for the reason that the SPM berth did not carry any berth hire charges. For the aforementioned reasons, the invoices issued in Ext.P1 to P3 did not have any anchorage charges in respect of the vessels in question either under clause 2.3.3 or clause 2.3.4 of SoR. The SoR came into effect thirty (30) days after the date of notification, *i.e.*, 29.11.2019.

7. The Cochin Port Trust found it necessary to seek clarification in the SoR and get approval from TAMP to apply anchorage charges in

these situations under clause 2.3.4. The Cochin Port Trust sought clarification from TAMP in its letter dated 23.03.2020. The Cochin Port Trust issued a Trade Circular dated 04.07.2020 deciding to collect anchorage charges with effect from 11.03.2020 on *ad hoc* basis, subject to the approval of TAMP, as follows:

> "a. For the vessels calling at Cochin Port and have been allotted non-Port berths or Port berths with no berth hire charges, anchorage charges will be levied as per para 2.3.4 of the SOR.
>
> b. In case of the vessels which have been shifted from berth to anchorage and further sailed from anchorage, the anchorage charges will be levied on the last berth where the vessel was berthed as per para 2.3.3 of the SOR. If the last berth is non port berth or berth no berth hire charges, then the anchorage charges shall be levied as per para 2.3.4 of SOR.
>
> c. In case the vessel is shifted from berth to anchorage and then back to berth, then the anchorage charges (post shifting from berth to anchorage) will be levied as per para 2.3.3 of the SOR applicable to the berth to which the vessel is shifted from anchorage. In the case of vessel shifting to a non-Port berth or a Port berth with no berth hire charges, the anchorage charges as per para 2.3.4 of the SOR will be applicable."

7.1 The CoPT was of the opinion that anchorage charges were

included in the SoR. Therefore, an Addendum dated 07.08.2020 was issued to the Trade Circular stating that "the date of implementation of a collection of Anchorage Charges may be read as 29.11.2019 (*i.e.*, the date of implementation of revised SoR of CoPT) instead of 11.03.2020. Thereafter, the invoices in Exts. P5, P6 and P7 were issued to the petitioner by CoPT for anchorage charges on the three vessels mentioned above. These were *ad hoc* charges levied till the final approval was received from TAMP. The total amount of these invoices would come to Rs.68,02,395/-.

8. *Vide* Trade Circular dated 04.07.2020 the CoPT proposed to incorporate a legal fiction/deeming provision whereby '*vessels calling for berthing at Cochin Port but berthed at Port Berths with no hire charges*' would be deemed to fall under the category of '*vessels not calling for berthing at Cochin Port*', *i.e.,* vessels anchored in the Outer Port Limits (OPL) for the purpose of levy of anchorage charges under clause 2.3.4 of the SoR. The amendment to the SoR was passed by the TAMP on 07.09.2020 and

notified under Section 48 of the MPT Act on 06.10.2020. The clauses contained in the Trade Circular of CoPT dated 04.07.2020 were inserted under clause 2.3.4 of the SoR retrospectively with effect from 29.11.2019, *i.e.*, the date on which SoR came into force.

8.1 *Vide* Clause 9.2 of the amendment, the CoPT's decision to collect anchorage charges on *an ad hoc basis as per the Trade Circular was also ratified by the TAMP on the grounds that the proposed amendments were of a* clarificatory nature to remove ambiguity.

***Petitioners' submission***:

9. Mr P Deepak learned Senior Counsel assisted by Adv Sneha Rajiv, appearing for the petitioner submits that the amendment brought in by TAMP in the SoR with effect from 06.10.2020 to levy anchorage charges on vessels calling for berthing at Cochin Port but berthed at Port Berths with no hire charges would deem to fall under the category of vessels not calling for berthing at Cochin Port for the purpose of levy of anchorage charges under clause 2.3.4 of the SoR is not clarificatory but

substantive charge levied on the vessels calling for berthing at Cochin Port but berthed at Port Berths with no hire charges.. Therefore, no anchorage charges could be levied on such vessels with retrospective effect, *i.e.*, before the amendment was brought into force.

10. The three situations for bringing amendment by TAMP as proposed by the CoPT, in order to say that the amendments are only clarificatory in nature of clause 2.3.4, *i.e.*, (i) vessels waiting at anchorage but not calling to be berthed at Cochin Port (those vessels will go from the Outer Roads only without coming inside); (ii) vessels waiting at anchorage to be berthed at non-port berth (vessels coming inside); and (iii) vessels waiting at anchorage to be berthed at Port Berth having no Berth Hire Charges (vessels coming inside), is completely fallacious inasmuch as the heading of clause 2.3.4 itself indicate that anchorage charges under this clause are applicable for vessels not calling for berthing at Cochin Port. Therefore, the vessels referred to in situations (ii) and (iii) mentioned above involve vessels coming inside, i.e., vessels

calling for berthing at Cochin Port, and so, by no stretch of the imagination it can be said to fall within the ambit of clause 2.3.4. Only vessels falling in situation (i) can be legitimately said to be covered by clause 2.3.4. If the amendment in the SoR is not clarificatory, then it has to be only prospective and cannot be retrospective.

11. Thus, the petitioner seeks to quash the Trade Circular dated 04.07.2020 to the extent it seeks to collect anchorage charges with effect from 11.03.2020 on *ad hoc* basis. The petitioner also challenges Exts.P5, P6 and P7 invoices levying anchorage charges retrospectively.

***Respondent's submission***:

12. On the other hand, Mr Paulose C Abraham learned Counsel appearing for the Cochin Port Trust and TAMP has submitted that the amendment brought in in the Trade Circular dated 04.07.2020 along with the Addendum dated 07.08.2020 issued to the Trade Circular is only to bring clarity to the existing SoR so as to remove the ambiguity raised by the Port users, including the petitioner. There is no revision in the rates

or retrospective application of the SoR as alleged. The SoR was implemented on 29.11.2019. The anchorage charges levied are not a new tariff item. The TAMP has the power to rectify *ad hoc* charges levied by the CoPT. Thus, these charges were inbuilt in the SoR, which came into effect from 29.11.2019.

12.1 The learned Counsel for the Cochin Port Trust further submits that the CoPT has paid the GST on the anchorage charges for which the impugned invoices in Exts. P5 to P7 were issued.

***Analysis***:

13. The question which requires consideration of this Court is whether the amendment in SoR is clarificatory or substantive. If it is clarificatory, then the anchorage charges levied would be justified, and if it is substantive, *i.e.*, charges are levied for the first time which was not contemplated in the SoR, will these be given retrospective operation?

14. It is apt to take note of a few judgments on what amendments can be said to be substantive and what amendments can be said to be

clarificatory.

***Panchi Devi v. State of Rajasthan***[1]

15. The Supreme Court, in this case, held that subordinate legislation is ordinarily prospective in nature. A right or liability which is created for the first time, cannot be given a retrospective effect.

***C J Paul v. District Collector***[2]

16. The case pertains to the interpretation and/or application of the provisions of the Stamp Act 1899 as amended by the State of Tamil Nadu. The period of limitation so far as Section 47-A is inserted in the State of Tamil Nadu by Act 24 of 1967 is two years. A limitation period of four years was provided in terms of the proviso appended to Section 19-B(4) of the Act but the Statute which was applicable at the relevant point of time provided for invoking the period of limitation was four years from the date of registration. Sections 47-A and 19-B of the

[1] (2009) 2 SCC 589
[2] (2009) 14 SCC 564

Act provided for penalty.

16.1 The Authorities in the State of Tamil Nadu did not initiate proceedings within two years from the date of the knowledge, as provided in Section 47-A of the Act. However, in terms of Section 19-B of the Act, the period of limitation provided was four years from the date of registration, not from the date of knowledge. Section 47-A prescribes the limitation for initiation of proceedings thereunder is five years.

16.2 The Supreme Court held that the words "four years" from the date of registration were inserted by Act 1 of 2000 and only at a later stage did wisdom dawn on the State Authorities that they would not be able to find out the evasion of stamp duty within the aforementioned period, amended the said provision so that the period of limitation would start from the date of knowledge and not from the date of registration. Such an amendment cannot be retrospective in nature. It was held that the Court cannot supply *casus omissus*.

16.3 Paragraphs 10 to 15 of the said judgment are extracted

hereunder:

> "10. Section 47-A of the Act was inserted in the State of Tamil Nadu by Act 24 of 1967. Indisputably, the period of limitation was two years for initiation of a proceedings thereunder. However, Section 47-A of the Act also underwent an amendment by Tamil Nadu Act 1 of 2000 which came into force with effect from 6-3-2000 whereby and whereunder the period of limitation was extended to five years.
>
> 11. The liability to pay stamp duty arises on presentation of a document. Indisputably, the registration office of the State of Kerala had the requisite jurisdiction to register the document in terms of the provisions of the Registration Act. The registration authorities of the State of Tamil Nadu came to know of the registration of the said documents on 30-3-1996 when they were filed before some authorities. In terms of the provisions of the Act, the Collector alone would initiate a proceeding for recovery of deficit stamp duty. The proceeding was initiated on 5-5-1998 but the notices were issued only on 7-6-1998.
>
> 12. The period of limitation so far as Section 47-A of the Act is concerned is two years. The limitation of period of four years was provided for in terms of the proviso appended to Section 19-B(4) of the Act but the statute which was applicable at the relevant point of time provided for invoking the period of limitation was four years from the date of registration.
>
> 13. Sections 47-A and 19-B of the Act provide for penalty. A statute of

limitation conferring jurisdiction upon the statutory authorities to impose penalty must, therefore, be construed strictly. A penal statute, as is well known, unless expressly provided, cannot be given a retrospective effect. (See Ritesh Agarwal v. SEBI.) The amendments carried out by the State of Tamil Nadu in the Act must, therefore, be held to have a prospective operation only.

14. There cannot be any doubt whatsoever that ordinarily in a case of this nature, the date of knowledge would be the starting point for computing the period of limitation. The authorities of the State of Tamil Nadu came to know of the execution of the deeds of sale dated 1-2-1990 only on 30-3-1996. They could have initiated a proceeding, if any, within a period of two years from the said date as provided for in Section 47-A of the Act. However, in terms of Section 19-B of the Act, the period of limitation provided was four years from the date of registration and not from the date of knowledge.

15. Submission of Mr Sundaravardan that the subsequent amendment 5. carried out by Act 1 of 2000 was only clarificatory in nature cannot be accepted. The State advisedly used the words "four years" from the date of registration. Only at a later stage, wisdom dawned on them that they may not be able to find out the evasion of stamp duty within the aforementioned period, amended the said provision so that the period of limitation may start from the date of knowledge and not from the date of registration. The said amendment is, thus, also not retrospective in nature. It is now well settled that the court cannot supply casus omissus.

(See Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & ETIO[3].)"

***Delta Engineers v. State of Goa***[3]

17. The question which was considered by the Supreme Court in the said case *inter alia* was whether the Port Authorities have the power and authority to claim rental charges for the use of Government riverine land, retrospectively. The Supreme Court noticed that when the Goa, Daman and Diu Port Rules 1983 were brought into force on 05.04.1984, there was no provision for the levy of any fee or charge for the use of riverine land. The Rules only provided for a fee for the occupation of open plots. Only by the 1992 Amendment, the words 'open riverine land' were added under Entry 21(4)(A-iv) of the First Schedule so as to subject the occupation of open riverine land to payment of fees. Prior to the 1992 Amendment, the First Schedule to the Rules did not provide for the levy of any fees for the occupation of riverine land. It was only by the

[3] (2009) 12 SCC 110

1994 Amendment, with effect from 03.03.1994, that the Rules were amended by inserting clause (ff) in Rule 2 containing the definition of "government riverine land" and by inserting Rule 54-A specifically providing that no government riverine land should be used without prior written permission of the Captain of Ports and without making advance payment of rental charges at the prescribed rate.

17.1 Considering the aforesaid provisions, the Court was of the opinion that prior to the said amendment to the Rules in 1994, neither the Act nor the Rules authorised or enabled the Government to levy any fee/charge for the use of Government riverine land. The Court considered the question of whether the 1992 Amendment and 1994 Amendment to the Rules were retrospective in operation. Paragraphs 34 to 36 of the said judgment are extracted hereunder:

> "34. We may next consider whether the 1992 and 1994 Amendments to the Rules were retrospective in operation. In Zile Singh v. State of Haryana this Court held: (SCC p. 8, para 13)
>
> "13. It is a cardinal principle of construction that *every statute is prima facie prospective*

> *unless it is expressly or by necessary implication made to have a retrospective operation*. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. *Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights*, it is deemed to be prospective only...."

(emphasis supplied)

The Amendment Rules do not provide that they are retrospective in operation. Nor do the circumstances warrant such an inference. In fact, the contention of the respondents is not that power to levy fees/charges for use of riverine land was created/vested in the Port Authorities, by virtue of the Amendment Rules and that such power was given to levy fees/charges retrospectively. The contention has been that the power to levy fees/charges existed ever since the Rules came into force on 5-4-1984 and that position was merely clarified by the Amendment Rules in 1992 and 1994.

35. We have already held that the Amendment Rules of 1992 and 1994 are not clarificatory, but are provisions investing the Port Authorities with the power to levy and collect charges for occupation of government riverine land. Therefore, the demand for charges for use of government riverine land is valid only from 3-3-1994. Therefore the Port Authorities could not demand or recover any amount for the period prior to 3-3-1994. The Port Authorities are therefore liable to refund any amount recovered within three years prior to the date of the writ petition. Obviously, any amount paid during a period beyond three years from the date of the writ petition, is not recoverable as barred by delay and laches.

36. We therefore allow these appeals in part as follows:

(a) The amendment of Entry 21(4)(A-iv) in the First Schedule, and insertion of Rule 54-A and Rule 2(ff) by the Goa, Daman and Diu Ports (Amendment) Rules, 1992 and the Goa, Daman and Diu Ports (Amendment) Rules, 1994, are upheld.

(b) It is declared that the respondents could not demand or recover any amount for the use and occupation of government riverine land for the period prior to 3-3-1994.

(c) Any charge recovered by the respondents from the appellant, towards occupation of government riverine land for the period prior to 3-3-1994, shall be refunded to the appellant, if such amount has been received by the Port Authorities within three years before the date of filing of the writ petition. The amount, if any, so due shall be refunded with six per cent interest from the date of receipt till date of repayment within three months from today. Alternatively, the amount paid by the appellant for the period prior to 3-3-1994 in entirety (even amounts paid prior to three years from the date of petition) may be adjusted at the option of the Port Authorities towards future dues, without any obligation to pay interest."

## ***Union of India v. Martin Lottery Agencies Limited***[4]

18. The Supreme Court decided the issue regarding the mode of

[4] (2009) 12 SCC 209

determination of a particular Statute or provision whether declaratory or clarificatory. It was held that whether subordinate legislation or a parliamentary statute is clarificatory or declaratory would depend upon the nature thereof as well as the object it seeks to achieve.

18.1 The Supreme Court referred to Bennion's Statutory Interpretation and G P Singh's Principles of Statutory Interpretation, where it was said: "*An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the Constitution came into force, the amending Act also will be part of the existing law.*" The Supreme Court further said that if by reason of an explanation, substantive law may be introduced, it will have no retrospective effect. The expressions like "*for the removal of doubts*" are not conclusive. The question as to whether subordinate legislation or parliamentary statute would be held to be clarificatory or declaratory or not would depend upon the nature

thereof as well as the objective it seeks to achieve. If two views are not possible, resorting to clarification and/or declaration may not be permissible.

18.2 Paragraph 43 of the said judgment reads as follows:

> "43. The question as to whether a subordinate legislation or a parliamentary statute would be held to be clarificatory or declaratory or not would indisputably depend upon the nature thereof as also the object it seeks to achieve. What we intend to say is that if two views are not possible, resort to clarification and/or declaration may not be permissible."

***Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited***[5]

19. The Constitution Bench considered whether legislation has a retrospective operation or prospective operation. The general rule of construing the Statutes to have prospective effect, however, this general rule would not apply to curative or clarificatory Statutes. Unless the

[5] (2015) 1 SCC 1

legislation is for the purpose of supplying an obvious omission in a former legislation or to explain a former legislation, legislations which modified accrued rights or impose obligations or new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective operation.

19.1 Paragraphs 41 and 42 of the said judgment, which are relevant for the purposes of the decision in the present case, are extracted hereunder:

> "41. We would like to embark on a discussion on some basic and fundamental concepts, which would shed further light on the subject matter.
>
> 41.1 No doubt, there is no scope for accepting the Libertarian theory which postulates among others, no taxation by the State as it amounts to violation of individual liberty and advocates minimal interference by the State. The Libertarianism propounded by the Australian-born economist philosopher Friedrich A. Hayek and American economist Milton Friedman stands emphatically rejected by all civilised and democratically governed States, in favour of strongly conceptualised "welfare state". To attain welfare state is our constitutional goal as well, enshrined as one of its basic feature, which runs through our Constitution. It is for this

reason, specific provisions are made in the Constitution, empowering the legislature to make laws for levy of taxes, including the income-tax. The rationale behind collection of taxes is that revenue generated therefrom shall be spent by the governments on various developmental and welfare schemes, among others.

41.2 At the same time, it is also mandated that there cannot be imposition of any tax without the authority of law. Such a law has to be unambiguous and should prescribe the liability to pay taxes in clear terms. If the concerned provision of the taxing statute is ambiguous and vague and is susceptible to two interpretations, the interpretation which favours the subjects, as against there the revenue, has to be preferred. This is a well established principle of statutory interpretation, to help finding out as to whether particular category of assessee are to pay a particular tax or not. No doubt, with the application of this principle, Courts make endeavour to find out the intention of the legislature. At the same time, this very principle is based on "fairness" doctrine as it lays down that if it is not very clear from the provisions of the Act as to whether the particular tax is to be levied to a particular class of persons or not, the subject should not be fastened with any liability to pay tax. This principle also acts as a balancing factor between the two jurisprudential theories of justice – Libertarian theory on the one hand and Kantian theory along with Egalitarian theory propounded by John Rawls on the other hand.

41.3 Tax laws are clearly in derogation of personal rights and

property interests and are, therefore, subject to strict construction, and any ambiguity must be resolved against imposition of the tax. In Billings v. U.S.[14], the Supreme Court clearly acknowledged this basic and long-standing rule of statutory construction:

> "Tax Statutes . . . should be strictly construed, and, if any ambiguity be found to exist, it must be resolved in favor of the citizen.
>
> Eidman v. Martinez, 184 U.S. 578, 583; United States v. Wigglesworth, 2 Story, 369, 374; Mutual Benefit Life Ins. Co. v. Herold, 198 F. 199, 201, aff'd 201 F. 918; Parkview Bldg. Assn. v. Herold, 203 F. 876, 880; Mutual Trust Co. v. Miller, 177 N.Y. 51, 57."

41.4 Again, in United States v. Merriam[15], the Supreme Court clearly stated at pp. 187-88:

> "On behalf of the Government it is urged that taxation is a practical matter and concerns itself with the substance of the thing upon which the tax is imposed rather than with legal forms or expressions. But in statutes levying taxes the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the Government and in favor of the taxpayer. Gould v. Gould, 245 U.S. 151, 153"

41.5 As Lord Cairns said many years ago in Partington v. Attorney-General[16]:

> "...as I understand the principle of all fiscal legislation it is this : If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be.

42. There are some other circumstances which reflect the legislative intent. The problem which was highlighted in the Conference of Chief

Commissioners on the rate of surcharge applicable is noted above. In view of the aforesaid difficulties pointed out by the Chief Commissioners in their Conference, it becomes clear that as per the provisions then enforced, levy of surcharge in the block assessment on the undisclosed income was a difficult proposition. It is for this reason retrospective amendment to Section 113 was suggested. Notwithstanding the same, the legislature chose not to do so, as is clear from the discussion hereinafter.

42.1 "Notes on Clauses" appended to Finance Bill, 2002 while proposing insertion of proviso categorically states that "this amendment will take effect from 1st June, 2002". These become epigraphic words, when seen in contradistinction to other amendments specifically stating those to be clarificatory or retrospectively depicting clear intention of the legislature. It can be seen from the same notes that few other amendments in the Income Tax Act were made by the same Finance Act specifically making those amendments retrospectively. For example, clause 40 seeks to amend S.92F. Clause iii (a) of S.92F is amended "so as to clarify that the activities mentioned in the said clause include the carrying out of any work in pursuance of a contract." This amendment takes effect retrospectively from 01.04.2002. Various other amendments also take place retrospectively. The Notes on Clauses show that the legislature is fully aware of 3 concepts:

(i) prospective amendment with effect from a fixed date;

(ii) retrospective amendment with effect from a fixed anterior date; and

(iii) clarificatory amendments which are retrospective in nature.

42.2 Thus, it was a conscious decision of the legislature, even when the legislature knew the implication thereof and took note of the reasons which led to the insertion of the proviso, that the amendment is to operate prospectively. Learned counsel appearing for the assessees sagaciously contrasted the aforesaid stipulation while effecting amendment in Section 113 of the Act, with various other provisions not only in the same Finance Act but Finance Acts pertaining to other years where the legislature specifically provided such amendment to be either retrospective or clarificatory. In so far as amendment to Section 113 is concerned, there is no such language used and on the contrary, specific stipulation is added making the provision effective from 1st June, 2002.

***State of Bihar v. Ramesh Prasad Verma***[6]

20. In this case, the Supreme Court held that any legislation or an instrument having the force of law would be clarificatory, declaratory or explanatory in nature and purport if it is brought in to supply an obvious omission or to clear up doubts *qua* any prior law. Paragraph 21 of the said judgment is extracted hereunder:

"21. The proposition has been so well laid that we do not wish to burden

[6] (2017) 5 SCC 665

the present rendition by referring to other rulings in the same vein. Suffice it to state that any legislation or instrument having the force of law, if clarificatory, declaratory or explanatory in nature and purport, in order to supply an obvious omission or to clear up doubts qua any prior law, retrospective operation thereof is generally intended. Applying this test, in the absence of any indication to the contrary, either in the parent Act or the Rules or the notifications involved, we are thus of the unhesitant opinion that on a conjoint reading of Rule 26 and the two notifications, the enhanced rate of royalty at Rs 100 per cubic metre for boulder, gravel and shingle, which are used or are capable of being used for making chips would be realisable w.e.f. 1-4-2001 and axiomatically thus, the respondents are liable to discharge the demand, therefor, as raised in terms thereof. The respondents were fully aware of the amended rate of Rs 100 per cubic metre for the minerals extracted by them, and thus, the reasoning of the High Court that they might not have passed on the burden to their purchasers is without any factual basis and being clearly speculative is untenable. The High Court, in our view, had clearly erred in interpreting the relevant legal provisions and the Notification dated 26-12-2001 in particular in holding that the enhanced rates, as fixed by the Notification dated 24-3-2001, would be payable for the minerals involved, as extracted from the two areas, mentioned in the Notification dated 26-12-2001 on and from that date. The determination made by the High Court is thus indefensible and consequently, the impugned decision[1] is hereby set aside."

***Sree Sankaracharya University of Sanskrit v. Dr Manu***[7]

21. After conducting a survey of the case law, the following principles were culled out to hold whether a Statute or an instrument having the force of law is curative or clarificatory and, therefore, has a retrospective operation.

21.1 Paragraphs 52 and 53 are extracted hereunder:

> "52. From the aforesaid authorities, the following principles could be culled out:
>
> i) If a statute is curative or merely clarificatory of the previous law, retrospective operation thereof may be permitted.
>
> ii) In order for a subsequent order/provision/amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the amendment is considered to be a clarification or a declaration of the previous law and therefore applied retrospectively.
>
> iii) An explanation/clarification may not expand or alter the scope of the original provision.

[7] 2023 SCC OnLine SC 640

iv) Merely because a provision is described as a clarification/explanation, the Court is not bound by the said statement in the statute itself, but must proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is a substantive amendment which is intended to change the law and which would apply prospectively.

53. Applying the law as discussed hereinabove to the facts of the present case, we are of the view that the subsequent Government Order dated 29th March, 2001 cannot be declared as a clarification and therefore be made applicable retrospectively. The said order has substantively modified the Government Order dated 21st December, 1999 to the extent of stating that teachers who had already got the benefit of advance increments for having a Ph.D. degree, would not be eligible for advance increments at the time of their placement in the selection grade. As noted above, the law provides that a clarification must not have the effect of saddling any party with an unanticipated burden or withdrawing from any party an anticipated benefit. However, the Government Order dated 29th March 2001 has restricted the eligibility of lecturers for advance increments at the time of placement in the selection grade only to those who do not have a Ph.D. degree at the time of recruitment and subsequently acquire the same."

21.2 Thus, an explanation or clarification cannot expand or alter the scope of the original provision, and clarification must not have

the effect of saddling any party with an unanticipated burden or withdrawing from any party an anticipated benefit.

***Discussion:***

22. Applying these principles in the present case, the Trade Circular dated 04.07.2020 for the first time sought to collect anchorage charges from the vessels calling for berthing at Cochin Port other than vessels mentioned in clauses 2.3.1 for which the Schedule of berth hire charges were provided in clause 2.3.2 by the deeming fiction in clause 2.3.4.

22.1 This is the liability which is being fastened for the first time on the vessels on which otherwise the anchorage charges were not levied. Therefore, this Court is of the view that the amendment brought in SoR in 2019 to include the vessels other than vessels mentioned in clause 2.3.1 for which the schedule of berth hire charges are provided in clause 2.3.2 to collect the anchorage charges under clause 2.3.4 of SoR by incorporating a deeming provision is not a clarificatory amendment but

a substantive amendment.

23. A legislation is presumed not to be intended to have a retrospective operation. The idea is that a current law should govern current activities. The law passed today cannot apply to the events of the past. This principle of law is known as *lex prospicit non respicit*, *i.e.*, the law looks forward, not backwards. The charges cannot be given retrospective effect but will operate only prospectively, *i.e.*, from the date of the amendment brought in in the SoR on 07.09.2020, which was notified only on 06.10.2020. The introduction of a deeming fiction for the first time ought not to change the character of past transactions.

***Conclusion***:

24. In view of the discussions above, this Court holds thus:

(i) The invoices issued to the petitioner for anchorage charges in Exts.P5 to P7 are set aside. The petitioner is not liable to pay the anchorage charges for the three vessels over and above the charges collected in Exts. P1 to P3.

(ii) However, if the Cochin Port Trust has collected the anchorage charges from other vessels that have not come before this Court, they are not entitled to a refund of the said anchorage charges collected by the CoPT.

(iii) As the petitioner is not liable to pay the anchorage charges prior to 06.10.2020, the CoPT may take up a case with the GST Authorities for a refund of the GST paid on the anchorage charges sought to be levied on the three vessels in question.

***Result***:

As aforementioned, the writ petition is allowed. However, no order as to costs.

All Interlocutory Applications regarding interim matters stand closed.

**Sd/-**

**D K SINGH**

JUDGE

jjj

APPENDIX OF WP(C) 1992/2021

PETITIONER EXHIBITS

| | |
|---|---|
| EXHIBIT P1 | TRUE COPY OF THE INVOICE DTD 13-04-2020 RAISED ON MT DTH FALCON FOR AN AMOUNT OF RS. 1,61,01,302.64 |
| EXHIBIT P2 | TRUE COPY OF THE INVOICE DTD 05-05-2020 RAISED ON MT DELTA SKY FOR AN AMOUNT OF RS. 97,69,814.62/- |
| EXHIBIT P3 | TRUE COPY OF THE INVOICE DTD 21-05-2020 RAISED ON MT EVRIDIKI FOR AN AMOUNT OF RS., 13180722.18/- |
| EXHIBIT P4 | TRUE COPY OF THE TRADE CIRCULAR DTD 04-07-2020 ISSUED BY THE 3RD RESPONDENT WITH THE APPROVED OF THE 2ND RESPONDENT |
| EXHIBIT P5 | TRUE COPY OF THE INVOICE DTD 04-07-2020 RAISED ON MT DTH FALCON FOR AN AMOUNT OF RS. 5,52,402/- |
| EXHIBIT P6 | TRUE COPY OF THE INVOICE DTD 04-07-2020 RAISED ON MT DELTA SKY FOR ANA AMOUNT OF RS. 33,85,202.52/- |
| EXHIBIT P7 | TRUE COPY OF THE INVOICE DTD 04-07-2020 RAISED ON MT EVRIDIKI FOR AN AMOUNT OF RS. 28,64,790.85/- |
| EXHIBIT P8 | TRUE COPY OF THE ORDER DTD 06-10-2020 ISSUED BY THE 2ND RESPONDENT. |
| EXHIBIT P9 | TRUE COPY OF THE STATEMENT EVIDENCING AMOUNTS DEDUCTED BY COCHIN PORT TRUST FROM THE RUNNING ACCOUNT OF THE PETITIONER. |
| Exhibit P10 | TRUE COPY OF THE SCREENSHOT OF GSTR 2B-AUTO DRAFTED ITC STATEMENT. |
| Exhibit P11 | TRUE COPY OF THE GSTR 2A STATEMENT OF JULY 2020. |
| Exhibit P12 | TRUE COPY OF THE GSTR 2B STATEMENT FOR AUGUST 2020. |
| Exhibit P13 | TRUE COPY OF THE LETTER BEARING NO. SN/001 DTD. 11.11.2020 PREFERRED BY THE PETITIONER TO THE 4TH RESPONDENT. |

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| Exhibit P14 | TRUE COPY OF THE ACKNOWLEDGEMENT DTD. 11.11.2020 ISSUED BY THE OFFICE OF THE 4TH RESPONDENT. |

RESPONDENT EXHIBITS

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| Exhibit R4(a) | True copy of SOR as notified in the Gazette of India on 30.10.2019 vide Gazette No.378 |
| Exhibit R4(b) | True copy of the Addendum Trade Circular dated 07.08.2020 |
| Exhibit R4(c) | A true copy of the 'Customer Line Item Display' of the petitioner's deposit account from 26.06.2020 to 06.08.2020 generated SAP program used by Port Trust |
| Exhibit R4(d) | TRUE COPY OF THE TARIFF POLICY FOR MAJOR PORT TRUST, 2018' DATED 16.1.2019 NOTIFIED BY THE TARIFF AUTHORITY FOR MAJOR PORTS |
| Exhibit R4(e) | TRUE COPY OF THE WORKING GUIDELINES TO OPERATIONALIZE THE TARIFF POLICY FOR MAJOR PORT TRUSTS, 2018' DATED 30.1.2019 NOTIFIED BY THE TARIFF AUTHORITY FOR MAJOR PORTS |
| Exhibit R4(f) | TRUE COPY OF BILL DATED 19.5.2022 IN RESPECT OF THE VESSEL ASTRO PHOENIX |
| Exhibit R4(g) | TRUE COPY OF BILL DATED 24.5.2022 IN RESPECT OF THE VESSEL ASTRO PHOENIX |
| Exhibit R4(h) | TRUE COPY OF BILL DATED 18.6.2024 IN RESPECT OF THE VESSEL CARIBBEAN 1 |
| Exhibit R4(i) | TRUE COPY OF BILL DATED 19.6.2024 IN RESPECT OF THE VESSEL CARIBBEAN 1 |
| Exhibit R4(j) | TRUE COPY OF BILL DATED 27.1.2023 IN RESPECT OF THE VESSEL ROYAL SESA |
| Exhibit R4(k) | TRUE COPY OF BILL DATED 13.2.2023 IN RESPECT OF THE VESSEL ROYAL SESA |
| Exhibit R4(l) | TRUE COPY OF BILL DATED 23.2.2023 IN RESPECT OF THE VESSEL ROYAL SESA |
| Exhibit R4(m) | TRUE COPY OF THE STANDARD TERMS AND CONDITIONS FOR OPENING DEPOSIT ACCOUNTS WITH THE COCHIN PORT AUTHORITY |

| | |
|---|---|
| Annexure R2(a) | A true copy of the copy of the said Order No.TAMP/10/2019-COPT dated 07.09.2020 |
| Annexure R2(b) | A copy of the said letter of the Fourth Respondent dated 18.09.2020 |