

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

Custom Appeal No. 10218 of 2022 - DB

(Arising out of OIA-JMN-CUSTOM-000-APP-045-2021-22 dated 30/09/2021 passed by Commissioner of CUSTOMS-JAMNAGAR(PREV))

LOTUS DANSHIP PRIVATE LIMITED

110-111 Eva Complex Opp Gulishta Ground
Bhavnagar, Gujarat

.....Appellant

Versus

C.C.-JAMNAGAR(PREV)

Sharda House...Bedi Bandar Road,
Opp. Panchavati,
Jamnagar, Gujarat

.....Respondent

APPEARANCE:

Shri Vikas Mehta, Consultant for the Appellant

Shri Rajesh Nathan, Assistant Commissioner (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. 11391/2024

DATE OF HEARING: **02/04/2024**

DATE OF DECISION: **21/06/2024**

RAMESH NAIR

The appellant filed present appeal against the order in appeal No. JMN-CUSTOM-000-APP-045-2021-22 dated 30.09.2021 whereby the learned Commissioner (Appeal) rejected the appeal of the appellant against the final assessment order dated 03.03.2020. The brief facts of the case are that the appellant being shipping agent cleared arrival of Tug Hurricane - III towing the Dead Vessel MV Aker at Alang port on 30.07.2019 after completing towing tug sailed for Dubai on 17.07.2019 under the cover of port clearance dated 14.07.2019 issued by the Superintendent of Customs SBY Alang. After departing from Alang the Tug reached Nahvasheva Mumbai and remained there till 02.08.2019, thereafter instead of departing to Dubai tug sailed for port Fuzerah UAE under cover of the port of clearance dated 02.08.2019.

However, on 06.08.2019 tug arrived at Alang encourage. The appellant vide letter dated 05.08.2019 had informed that tug was due to arrive at Alang encourage for breaking purpose. The appellant vide letter dated 14.08.2019 submitted the details of coastal consumption of MGO (high speed diesel) Lub. Oil, provision store and informed that they were ready to pay custom duty on the quantity of provisions and bunkers. Accordingly, manual Bill of Entry No. 03/2019-20 dated 04.09.2019 as permitted by the Commissioner of Customs (prev.), Jamnagar was filed and the same was provisionally assessed for want of test result of bunker. On 20.09.2019 the appellant paid provisionally assessed custom duty of Rs. 7,09,716/- however vide letter dated 01.10.2019 the adjudicating authority after hearing the appellant and considering the written submission passed the final assessment order dated 03.03.2020 and finally assessed Bill of Entry at the same value and same duty as assessed at the time of provisional assessment. As per the adjudicating authority the appellant was required to complete procedure of costal conversion at SBY Alang after shipping of D. V. Aker or at Nhavasheva port. The adjudicating authority states that as per prevailing practice and filing for consumption of bunkers and provisions during costal voyage from Alang port (MV Aker – shipping) to Alang encourage via Mumbai. The bill of entry was assessed provisionally for want of best result of bunkers and the appellant accordingly paid duty of Rs. 7,09,716/- by challan dated 17.09.2009. Being aggrieved by the final assessment order the appellant filed an appeal before the Commissioner (Appeal) vide the impugned order which was rejected. Therefore, the present Appeal filed by the appellant.

2. Shri Vikas Mehta, Consultant Appearing on behalf of the appellant submits that Adjudicating Authority has grossly misconstrued definition of coastal cargo under the provisions of Chapter-XII of Custom Act 1962.

2.1. He submit that the tug namely Hurricane-III had only been imported for breaking purpose and not for any furtherance commercial business purpose.

The Government statutorily provided the specific entry under the Custom Tariff Act, 1975, under the chapter sub heading 8908.00 of the Custom Tariff Act, Tariff Entry read as 8908.00- Vessels and other floating structures for breaking up.

2.2. He submits that when any old and used ship is being imported for breaking purpose the whole remaining stock either consisting various kinds of bunkers, provision stores, various accessories / parts of the ship, imported for breaking purpose. These types of goods consisting "only one and use ship" wholly classified under the above referred Chapter sub heading of the Customs Tariff Act, 1975 irrespective any stock of movable gears, stores which are always been lying as "stock" on board of the said importation of old and use ship, imported for only breaking purpose.

2.3. He submits that the import general manifest has also been presented before the proper customs officer before the respective custom house wherein a form-III has also been presented /filed which is only meant for the imported goods imported for home consumption on which the statutory duty of customs is being levied duly classified under Chapter Heading No. 8908 only and "not being declared other components/ accessories etc" of the spare parts of the above referred importation of old and used ship.

2.4. He submits that both the lower authority has wrongly interpreted coastal duty, coastal goods, coastal cargo. It is the submission that since the vessel along with bunkers is assessed for the purpose of breaking of tug the bunkers cannot be classified separately and cannot be demanded duty of coastal duty.

He placed Reliance on the following judgments:-

- 1987 (29) ELT 182 (Tri.) Collector of Customs, Ahmadabad V/s Shipping Corporation of India Ltd.,
- 1989(43) ELT 479 (Tri.) Collector of Customs & Central Excise V/s South East Asia Shipping Company Ltd.,

- 2000(123) ELT 91 (CAL.) Scindia Steam Navigation Co. Ltd. V/s Collector of Customs,
- 2009 (240) ELT 723 (Tri. Ahmd) Jain Marine Services v/s CC, Jamnagar
- 1987 (29) ELT 182 (Tri. Bombay) Collector of Customs v/s Shipping Corporation of India Ltd

3. Shri Rajesh Nathan, learned Assistant Commissioner (AR) appearing on behalf of Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that as per the facts of the case there is no dispute that the tug was brought to Alang port for breaking therefore the same is correctly classified under 8908.00.00 of the Custom Tariff Act, since the tug was brought for breaking up the same cannot be classified in different head i.e. the tug under 8908 and bunker under different heading.

4.1. We further find that the Bunker of the tug was considered by both the lower authority as the goods considering during the coastal run. However, as per the facts of the present case the tug along with the Bunker was presented for assessment. Therefore, the entire tug including the Bunker must be assessed for the purpose of breaking up hence on Bunker and other goods duty cannot be demanded separately. The whole case is based on the interpretation of coastal run only for the reason that the tug has first gone to Nhavasheva there after Fuzerah UAE then it came to Alang for clearance as tug for breaking up. In this regard we find on the identical facts this Tribunal has considered the case of Shipping Corporation of India Limited (Supra) wherein issue has been decided in favour of the assessee, the relevant order is reproduced below :-

“7. We have carefully considered the submissions made on both the sides and perused the records of the case. The short point for our consideration is whether the vessel, Anupama, at the relevant time can be considered as ‘a foreign going vessel’.

8. In order to answer the above question, it would be necessary to set out certain relevant facts. The vessel *Anupama* arrived in India loaded with fertilizers from Protis (Sicili). She discharged the entire cargo at Bhavnagar by 26-9-1975. According to the Department after the discharge of the cargo there was a request to revert to coastal trade and the vessel did revert to coastal trade on 26-9-1975. It sailed to Bombay and remained in Bombay upto 13-10-1975. In the meantime the agents of the ship filed a Bill of Entry from assessing the ship's store. The Shipping Corporation, however, disputed that the vessel *Anupama* reverted to coastal trade or there was any such request by the owners or the agents but the agents were compelled by the Customs to file the Bill of Entry. They further contended that after it discharged the cargo it carried from foreign port it extended her service as a daughter vessel for intermediate ports to the super-tankers and therefore, it has to be treated as a daughter vessel. There is no dispute that the ship's voyage from Bhavnagar to Bombay was in Ballast. It was not contended by the Department that the vessel *Anupama* at any time carried Indian goods or discharged Indian goods in any of the Indian ports. Admittedly, the vessel *Anupama* was engaged till 12-1-1976 in transportation of imported cargo between Indian ports. Thereafter, it sailed to Calcutta and then to Aden via Kakinada.

9. The Assistant Collector recorded a finding that the vessel has to be considered as having been reverted to coastal trade, firstly because there was a request to revert to coastal trade and secondly a Bill of Entry has also been filed and it was assessed. The Appellate Collector, however, took a different view. Relying on the judgment of the Calcutta High Court in *M/s. Turner Morrison*, the Appellate Collector held that the finding of the Assistant Collector that the vessel reverted to coastal trade was wrong.

10. The character of the vessel, whether it was foreign going vessel or it reverted to the coastal trade, should depend upon the voyage it performed and the nature of the goods it carried during the voyage. The request of the owners or the agents to revert to coastal trade or filing the Bill of Entry would be irrelevant in deciding the question whether the vessel in question was a foreign going vessel or not. In the whole of his order the Assistant Collector did not state that the vessel was engaged in loading and unloading of Indian cargo in Indian coasts. All that has been stated is that after discharge of the foreign cargo at Bhavnagar it sailed to Bombay on 26-9-1975 and remained in Bombay till 13-10-1975. Admittedly, the vessel sailed to Bombay in Ballast. Merely because it remained in Ballast from 26-9-1975 to 13-10-1975 it cannot be said that it reverted to coastal trade. The cargo brought by super-tankers which are called as 'mother vessels' were transported by *M.V. Anupama* to coastal ports till it sailed back to Aden via Kakinada. There was not even an allegation that the vessel was engaged in transportation of Indian cargo to any of the Indian ports before it sailed to Aden. The Calcutta High Court as well as Madras High Court in the two decisions referred to above on identical facts have held that the voyage performed by daughter vessels should be treated as a continuation of the voyage of the mother vessel and therefore the daughter vessel should be treated as a foreign going vessel.

11. Before the Calcutta High Court arguments similar to the arguments advanced by Shri Pal were addressed. It was contended that the vessel *Nancy Dee* was not a foreign going vessel within the meaning of Section 2(21) since at the relevant time she was carrying goods from one port, i.e. Paradip in India to another port in India, i.e. Kidderpore Docks. It was also urged that under Section 2(21) the character of the vessel for the time being was relevant and not the character of the goods. It was further urged that *Nancy Dee* was not engaged in carrying goods between a port in India and a port outside India but solely within Indian ports like Paradip or Sandheads to Kidderpore. The other argument addressed in that case was that a foreign going vessel under Section 2(21) must be engaged in carriage of goods between a port outside India and a port within India. It was also contended that the moment the goods were unloaded to *Nancy Dee* from the super-tankers the task of the super-tankers was over and *Nancy Dee* was carrying goods from a place or port in India to another port in India. The Division Bench of the Calcutta High Court, however, did not accept the above contentions. The High Court observed "under the scheme of the Act, it seems to us, that there may be two kinds of shippings, viz., (i) coastal shippings and (ii) foreign shippings. On the facts disclosed, it does not appear to us that this is a case of coastal shipping at all. *Nancy Dee* was not required to have and

did not have a licence for coastal trading vide Appellant's Solicitor's letter, dated 26-12-1970 to the Assistant Collector of Customs, being Annexure B to the petition. The facts reveal that the Government of India had entered into only one contract for carriage of goods. There was only one principal which was carrying the goods, 'Nancy Dee' was an agent of the foreign principal. The entire journey from a foreign port to the port of destination in India was one journey for carriage of imported goods and 'Nancy Dee' took part towards the end in completing the journey. In other words, these super-tankers were required to carry foodgrains from a foreign port to an Indian port, namely, either Paradip or Kidderpore Docks. The super-tankers by reason of their size and weight could not physically reach any of these ports. The super-tankers waited outside the port although within Indian territorial waters. They unloaded their cargo to 'Nancy Dee' and 'Nancy Dee' carried the goods to the ports. The carriage of the goods by 'Nancy Dee' was merely a continuation of what the super-tankers were required to do. There can be no doubt, on the facts of this case, that 'Nancy Dee' was engaged in the carriage of goods between a port outside India and a port in India, and as such, it was a foreign going vessel within the meaning of Section 2(21) during the period mentioned above."

12. The Madras High Court in the Writ appeals referred to above also took a similar view. The relevant observation in the judgment reads "the vessels, which brought wheat and mile, indisputably were foreign vessels owned or operated by foreign shipping companies, they could not be berthed in the port premises themselves for the purpose of unloading. They, therefore, employed daughter vessels. These daughter vessels could not be treated in any way different from the foreign vessels from which cargo had to be discharged. The daughter vessels were only a means adopted or used in order to enable the discharge of the cargo on land. The supplies made from the bonded stock should, therefore, in substance and in truth be taken to be supplies made to foreign vessels. If that be so, as we think it was the case, no customs duty would be leviable".

13. The ratio of the decisions of the Calcutta High Court as well as Madras High Court applies to the facts of the present appeal. The contention of the Department that it is the character of the vessel and not the character of the goods that is relevant for deciding the question as to whether a vessel is a foreign going vessel or not is not a correct proposition in law. "A foreign going vessel does not lose its character because it is on a coastal run enroute to foreign countries even if the coastal cargo is larger than the foreign cargo. The position would not change if the foreign going vessel discharge its entire foreign cargo and took cargo on its way to collect foreign cargo at another Indian port. It is only if the foreign going vessel is diverted to coastal traffic for some period of time then its status would be altogether different". (Law of Custom by S.D. Sukthankar, page 194).

14. In the instant case, all that the Department was able to establish was that after discharging foreign goods at Bhavnagar, the vessel voyaged to Bombay in Ballast and remained in Ballast from 26-9-1975 to 13-10-1975. This stay of the vessel by itself would not convert it into a coastal trading vessel. In this connection, reference may be made to the Departmental instructions found in the order of the Collector (Appeals). The instructions read "if a vessel completes discharge of foreign cargo at Bhavnagar and then proceeds in Ballast to another Indian port there to load cargo for another foreign port, that in Ballast journey does not constitute a break in its foreign voyage. Such a vessel is not considered to have reverted to coastal trade at any stage at all. It is all along the foreign going vessel. If a vessel after completing discharge of foreign cargo at an Indian port remains anchored in the coastal waters with no immediate future plans either to proceed to another Indian port with or without cargo or to proceed to foreign port with or without cargo then also it is wrong to consider as if it reverts to coastal trade immediately on completion of discharge of the foreign cargo. In such cases the idle time at the Indian port with no plans of future voyages immediately in sight has to be demarcated by a reasonable time limit. If the idle time was for purposes of any repairs or servicing of the vessel itself a longer time would have to be allowed. If the idle time was on account of no freight inducement a shorter time may be permitted. What is a reasonable time is a question of facts in the circumstances of each case. As a rule, the departmental instructions permit 3 months if the detention is for repairs and servicing and one month if the detention is for freight inducement. It is at the end of such period that the vessel would

be considered to have reverted to the coastal trade even if it continues to be idle in the coastal waters”.

15. *On a careful consideration of all the aspects, we reject this appeal and discharge the review show cause notice issued by the Government of India.*

16. *[per : Shri K.S. Dilipsinhji, M(T)]. - I have given the utmost consideration to the order drafted by Brother Hegde which is based on the judgments of the Hon’ble Calcutta and Madras High Courts. However, for the reasons to be recorded hereafter I am not able to persuade myself to subscribe to the points of view held by Brother Hegde. Hence this dissenting order.*

17. *The facts of the appeal and also the facts of the case and the arguments of the appellants and the respondent have been incorporated in paras 1 to 6 of the order drafted by Brother Hegde. I adopt them for reference and therefore I see no need for repeating them. The main question for consideration in the appeal of the Collector of Customs, Ahmedabad before this Tribunal is the levy of duty on stores imported by M.V. Anupama which arrived at Bhavnagar on 19-7-1975 and which reverted to coastal trade on 26-9-1975 as per the request of the Shipping Agents M/s J.M. Baxi & Co. at Bhavnagar. The appellants have argued that M.V. Anupama acted as a daughter vessel to the super-tankers and therefore, following the decisions of the Madras and Calcutta High Courts in Writ Appeal Nos. 583 to 587 of 1971, dated 22-4-1974 and appeal No. 314/71 decided on 3/4th May, 1976 respectively, no duty should be charged on the stores of the vessel M.V. Anupama by the Bhavnagar Custom House. As per the ratio of these judgments, the appellants have argued that the services of the M.V. Anupama to the super-tankers were those of the daughter vessel in the lightening operations from the mother vessels viz. super-tankers and therefore, the voyage of M.V. Anupama should be treated as a continuation of the voyages of the super-tankers and hence no duty should be leviable on the stores of M.V. Anupama. However, the Assistant Collector of Customs, Bhavnagar did not accept the contention of the steamer agent that the ship was a foreign going vessel within the meaning of Section 2(21) of the Customs Act and ordered levy of duty on the stores of the ship which was paid under Bill of Entry No. 31, dated 31-7-1976 and cash No. 1, dated 2-5-1977. The same contention has been repeated during the hearing of the appeal before the Tribunal and the same decisions of the Madras and Calcutta High Courts have been cited during the course of the hearing by the learned advocate of the respondent. Therefore, the main question which requires determination is the applicability of these decisions to the appeal now before the Tribunal.*

18. *So far as the decision of the Madras High Court in Writ Appeals Nos. 583 to 587/1971, dated 22-4-1976 is concerned the facts of the cases related to supply of ex-bond stores to the daughter vessels without payment of duty, in terms of Section 88 of the Customs Act. The Madras High Court on appeal held that the voyages performed by the daughter vessels were in the nature of continuation of the voyages of the mother vessels and therefore the order of the Assistant Collector of Customs, Madras demanding duty was not correct; and hence the same was set aside. The present case of the M.V. Anupama is not one of that type as the duty demanded by the Assistant Collector of Customs, Bhavnagar is not on the stores supplied ex-bond to M.V. Anupama, but on the import of the stores into India when the M.V. Anupama arrived at Bhavnagar from a foreign port, and reverted to coastal run. Therefore, the facts of the present appeal are distinguishable from the cases considered and decided, by the Honourable Madras High Court. So far as the present appeal is concerned, the stores of M.V. Anupama were imported into India when she arrived at Bhavnagar on 19-7-1975. Under Section 12 of the Customs Act, goods imported into India are chargeable to duties of Customs unless otherwise provided under the Customs Act. The ships stores are covered within the definition of the term “goods” under Section 2(22)(b) of the Customs Act and the stores were “imported” into India as defined under Section 2(23) when the Anupama arrived in Bhavnagar on 19-7-1975 from a foreign port. Therefore, there is no doubt that in terms of Section 12 the duty on stores of M.V. Anupama becomes leviable from the moment she arrived at Bhavnagar on 19-7-1975. In fact, under the same definition of the term “goods” the vessel M.V. Anupama is also treated as “goods” and duty is attracted on her. However, M.V. Anupama being a foreign vessel, the levy of duty on her is exempted under Notification No. 262/58-Cus, dated 11-10-1958. But the benefit of such an exemption is not available to the stores of*

the Anupama and they are chargeable to duty as mentioned above. But the levy and collection of duty can be postponed under Section 86(1) of the Customs Act, and under Section 87 ibid, the stores can be permitted to be consumed without payment of duty during the period the ship remains a foreign going vessel. The levy of duty can. thus be stayed and avoided so long as the ship remains a foreign going vessel. In the present instant, it is not the respondent's case that the imported stores remained on board without being consumed as provided under Section 86. The Collector's appeal pertains to the levy of duty on M.V. Anupama's stores when she did not remain a foreign going vessel, but reverted to coastal trade as per the request of her agents at Bhavnagar. The phrase "coastal trade" is not defined in the Customs Act, though Chapter XII deals with coastal goods and coasting vessels. Strictly speaking, such a definition is not essential for the consideration of the present appeal. What is important is the crucial fact that as per the agent's request, the Anupama ceased to be a foreign going vessel with effect from 26-9-75 attracting levy of duty on her stores in terms of Sections 12 and 87.

19. *However, the facts of the present appeal relating to the stores of M.V. Anupama on first sight appear to be identical with the case of the 'Nancy Dee' decided by the Honourable High Court at Calcutta in appeal No. 314/71 on 3/4-5-1976. Hence, they call for a more detailed examination. The Nancy Dee arrived at Paradip on 4-1-1970 and acted as the daughter vessel upto 23-2-1970. During this period, she acted as the daughter vessel to three super-tankers and made trips from Paradip or Sandheads to Calcutta and sailed finally from Calcutta for a foreign port on 23-2-1970. The Calcutta High Court took into account the leviability of duty under Section 12 of the Customs Act on the stores as these were imported into India as defined under Section 2(23). However, the High Court held that under Section 87 the stores can be allowed to be consumed without payment of duty during the period such vessel was a foreign going vessel. Since Nancy Dee had acted as a daughter vessel to the super-tankers, the Calcutta High Court held that the service of the Nancy Dee as a daughter vessel to the super-tankers was the continuation of the foreign voyages of the super-tankers, and hence no duty was leviable on the stores imported and consumed on board the Nancy Dee or supplied ex-bond to the vessel at the Indian ports. In coming to the aforesaid decision, the Hon'ble High Court observed that it was not necessary that the foreign voyage for bringing goods from a port outside India to a port in India should be completed by one ship. Besides the Hon'ble Calcutta High Court was guided by the fact that the shipping was of two categories; (i) coastal and (ii) foreign. The Hon'ble High Court further observed that the Nancy Dee was not required to have and did not have a licence for coastal trading as per the letter of the solicitors of M/s Turner Morrison & Co. Ltd. who were the appellants before the High Court. The High Court further E.L.T. that the Government of India's contract for import of the foodgrains was a composite one and the entire journey from a foreign port to the port of destination in India was one journey for carriage of imported goods. Since the super-tankers could not physically enter the ports by reasons of their size and weight, they-required the services of the daughter vessel. They unloaded the cargo into the Nancy Dee and the Nancy Dee carried the goods to the ports of destination, namely Paradip and Calcutta. Hence, the High Court held that the carriage of goods by the Nancy Dee was merely a continuation of the voyages of the super-tankers. The Nancy Dee was therefore held to be a foreign going vessel within the definition of Section 2(21) of the Customs Act and accordingly the Hon'ble High Court allowed the writ appeal of the agents of the Nancy Dee, M/s Turner Morrison & Co. Ltd. and set aside the Assistant Collector's order demanding duty on her stores. Besides, it seems the question relating to the levy of duty on the stores of the Nancy Dee went up for consideration before the Single Judge and the Division Bench of the Calcutta High Court out of an order of the Assistant Collector of Customs for Exports (II) of the Calcutta C.H. It would thus imply that the duty on the stores of the Nancy Dee was demanded by the Assistant Collector of Customs, Calcutta and not by the jurisdictional Assistant Collector in charge of Paradip port where the Nancy Dee arrived from a foreign port on 4-1-1970. The nature of the subsequent voyage of the Nancy Dee from Paradip to Calcutta is not explicitly revealed from the judgment of the Hon'ble High Court in Appeal No. 314/1971, dated 3/4th May, 1976. But it appears to be in the nature of the continuation of her foreign voyages as otherwise the duty on her stores would have been demanded by the Assistant Collector of Customs, Paradip. On the other hand, the facts*

regarding the appeal relating to the duty on the stores of the M.V. Anupama are very clear. She reverted to the coastal trade after arriving at the port of Bhavnagar. Furthermore, the Calcutta High Court was guided by the fact that the Nancy Dee was not required to have a licence for coastal trade. Under the Merchant Shipping Act, 1958, an Indian ship covered by Section 21 or a ship chartered by a citizen of India or a company cannot engage in the coasting trade without a licence from the Director General of Shipping. Under Section 3(2), "coasting trade of India" is defined as carriage by sea of passengers or goods from any port or place in India to any other port or place on the continent of India. The true meaning of the term "continent of India" can be inferred from Section 3 (1A) and this would cover India, Pakistan, Burma and Ceylon. Therefore "coasting trade of India" for the purposes of the Merchant Shipping Act, 1958 cannot be equated to "Coastal Trade" for the purposes of the Customs Act. The ports in Pakistan, Burma or Ceylon are not "Customs ports" within Section 2(12) of the Customs Act, nor can the Continent of India under the Merchant Shipping Act be held as coterminous with "India" as defined under Section 2(27) of the Customs Act. Besides, it is possible that the super-tankers and the Nancy Dee were chartered by the Government of India and in that case the Nancy Dee would not have required the licence for coasting trade. Therefore, the absence of a licence for the coasting trade of India under the Merchant Shipping Act is not relevant for determining as to whether a ship is a foreign going vessel under the Customs Act. This apart, there is no contention advanced by the agents or owners of the Anupama that she had or did not have a licence for coasting trade under Section 407 of the Merchant Shipping Act, 1958. Therefore, the judgment of the Calcutta High Court in the case of M/s Turner Morrison & Co. Ltd. can be distinguished from the present appeal of the Collector of Customs, Ahmedabad. Furthermore, I am to observe that in coming to the aforesaid finding, the High Court was deciding a question before it in its writ jurisdiction. In that case, the High Court was free to travel beyond the limits of the Customs Act and give an appropriate finding in the appeal. On the other hand, the Tribunal cannot go beyond the Customs Act. Apart from this aspect, the question of the binding nature of the High Court's judgment on the Tribunal was considered by the larger Bench of the Tribunal in the case of M/s Atma Steel Private Ltd. and Others, vide [1984 \(17\) E.L.T. 331](#). In this decision, the Tribunal held that it was not bound by the decision of the High Court, within whose jurisdiction the Tribunal was located, as the jurisdiction of the Tribunal comprised the whole of India and therefore the Tribunal had the judicial freedom to depart from the decision of a particular High Court. Following this decision of the Tribunal, I find myself unable to agree with the decision of the Calcutta High Court in the case of M/s Turner Morrison & Co. Ltd.

20. Reverting to the case of M.V. Anupama it is seen that after allowing the first appeal of the Shipping Corporation of India Ltd., the Appellate Collector of Customs in his Order No. S/49-2/79 Bhavnagar, dated 29-12-79 substantially reproduced the departmental instructions on the subject for the future guidance of the Assistant Collector. The instructions inter alia stipulated that the voyage in Ballast of a foreign going vessel from one Customs port to another to pick up cargo at the second port for export to foreign ports should be treated as a continuation of the foreign run of the vessel. These instructions also stipulate that in case a foreign going vessel is detained in Customs port for want of cargo or for repairs the reasonable period of detention in such cases should also be counted as the foreign run of the ship provided it ultimately leaves on a foreign voyage. While the Departmental instructions do not have a binding effect on the Tribunal, it is seen that the case of the Anupama is also not covered under the aforesaid instructions. While it is urged by the respondents in the course of the hearing of the appeal that the Anupama left in Ballast from Bhavnagar on 26-9-1975 for Bombay, the subsequent voyage of the Anupama from Bombay to Salaya was also a coastal voyage. It is not known whether on this voyage, the Anupama carried any coastal goods. However, in reply to the Assistant Collector's show cause notice, dated 15-4-1977, the Shipping Corporation of India Ltd. in their letter, dated 20-6-1977 addressed to the Assistant Collector of Customs, Bhavnagar stated that the Anupama waited at Bombay as it was decided to engage her for lightening cargo brought by the super bulk carriers expected to arrive at Salaya immediately thereafter. It is therefore legitimate to infer that the vessel left Bombay for Salaya for the aforesaid purpose. It is not known whether on this voyage also the Anupama carried any

goods from Bombay to Salaya. At Salaya, the Anupama acted as a daughter vessel to the super-tankers. Therefore if the Departmental instructions were to be extended to the Anupama, it would mean that she carried transshipment cargo from Salaya to other ports. In that event also the Anupama is not eligible to the concession for not charging the duty on her stores as envisaged in the departmental instructions quoted by the Appellate Collector in his Order, dated 29-12-1979.

21. Relying on the judgments of the Madras and Calcutta High Courts, the respondents have laid great stress on the argument that the voyages of the Anupama as a daughter vessel to the three super-tankers Motilal Nehru, Rajendra Prasad and Jhansi Ki Rani were a continuation of the voyages of the super-tankers. But there is a serious legal flaw in such a proposition. This argument totally ignores the provisions of Sections 30, 31, 39, 41 and 42 of the Customs Act which enjoin on the Master (1) to file the IGM of the ship; (2) to enter her inwards at the Customs port; (3) to file an entry outward at the same port; (4) to file an EGM at this port; and (5) to take port clearance from that port to the next port of call. The provisions of these Sections have further to be read with the Rules and Regulations framed by the Government and the Central Board of Excise and Customs for carrying out the purposes of the aforesaid Sections. These are the Import Manifest (Vessels) Regulations, 1971 and the Export Manifest (Vessels) Regulations, 1976. As per the first regulation, the Manifest is required to be filed in the prescribed form and with the prescribed declarations and documents. These requirements further stipulate that if a ship is not carrying any cargo for a particular Customs port, it has to file a Nil cargo manifest at that port. The Anupama would have complied with the requirements of the foregoing Sections and the Regulations when she acted as a daughter vessel to the super-tankers. The super-tankers had arrived from foreign ports and taking into account the requirements of these Sections and the Regulations it cannot be held that the services of the Anupama as a daughter vessel to the super-tankers were a continuation of the voyages of the super-tankers in the course of carrying the goods from the foreign ports to the coastal ports in India.

22. The judgments of the Madras and Calcutta High Courts held that the services extended by the daughter vessels to the mother vessels were in continuation of the foreign voyages of the mother vessels. The High Courts were guided by the fact that the super-tankers required the services of a daughter vessel as they could not reach the Indian ports of call on account of their large size, heavy bulk, and deep draft. The judgments of the High Courts would therefore imply that the super-tankers would be lightened by the daughter vessel. The correct interpretation of these decisions would mean that the daughter vessel should bring the imported goods from the super-tankers anchored at the high seas off the Indian port of destination to the port itself. Only in that sense, the daughter vessel could be said to be continuing the voyage of the mother ship. The Anupama's services in that sense cannot be considered as services of a daughter vessel to the mother vessel. The super-tankers Motilal Nehru and Rajendra Prasad arrived at Salaya while the third super-tanker Jhansi Ki Rani arrived at Paradip. These details are available from the letter No. 026/Inventory/193 dated 25-19-1979 of the Shipping Corporation of India Ltd. addressed to the Assistant Collector of Customs, Bhavnagar. As per this letter, the Anupama carried the cargo from the super-tankers off Salaya to Marmagao and Calicut. Therefore, the Anupama did not bring the foodgrains from the super-tankers anchored at the roads off Salaya to the port of Salaya which could be said to be a continuation of the voyages of the super-tankers. The voyages of the super-tankers ended at Salaya as seen from the records. Possibly after discharging the foodgrains at Salaya, the Motilal Nehru and Rajendra Prasad left for different ports other than Marmagao and Calicut. The Anupama, on the other hand, carried transshipment cargo from Salaya to Marmagao and Calicut. The voyages of the Anupama therefore went beyond the scope of the functioning of a daughter vessel to the super-tankers. Since on these voyages, she left Salaya, a Customs port for another Customs port, Marmagao or Calicut, she was in the coastal run. This was in continuation of the coastal trade which she entered at Bhavnagar on 26-9-1975. From Calicut, she touched Cochin enroute to Paradip and loaded bunkers. At Paradip, she helped lighten the third super-tanker and called at Calcutta for discharging the foodgrains brought by the Jhansi Ki Rani at Paradip. It is not the appellant's contention that Calcutta was on the itinerary of the Jhansi Ki Rani and hence the Anupama's voyage

from Paradip to Calcutta cannot be termed as the continuation of the foreign voyage of the jhansi Ki Rani. From Calcutta the Anupama sailed to Kakinada on 9-1-1976 and after loading ore at Kakinada, she sailed for the foreign port of Constanza on 17-1-1976 when she again embarked on a foreign run and became a foreign going vessel at that point of time. Therefore from 26-9-1975 to 17-1-1976, the Anupama was not a foreign going vessel. Therefore, the duty on her stores was correctly chargeable as held by the Assistant Collector of Customs, Bhavnagar in his order, dated 19-10-79. At best the Agents or the owners could have claimed drawback of Customs duty under Section 74- when the Anupama left Kakinada for Constanza on 17-1-1976.

23. *In the foregoing circumstances, I am of the opinion that the order of the Assistant Collector of Customs, Bhavnagar charging duty on the stores of the Anupama is correct and that the order of the Appellate Collector of Customs, dated 29-12-1979 is not legal and proper. Accordingly, I set aside the aforesaid order, dated 29-12-1979 of the Appellate Collector of Customs, allow the appeal of the Collector of Customs, Ahmedabad and restore the order I.G.M. No. 15/21-7-75, dated 19-10-1979 of the Assistant Collector of Customs, Bhavnagar levying a duty amounting to Rs. 92,761.05 on the stores of Anupama when she reverted to coastal trade at Bhavnagar on 26-9-1979.*

Bombay,

Sd/-

26-8-1986

(K.S. Dilipsinhji)

Member (Technical)

24. *Since there has been a difference between the two Members, the following point is required to be referred to the President in terms of Section 129C(5) of the Customs Act:- Whether in the facts and circumstances of the case, the appeal of the Collector of Customs, Ahmedabad is to be rejected as held by M(J) or allowed as held by M(T).*

Sd/-

Sd/-

(K. Gopal Hegde)

(K.S. Dilipsinhji)

Member (Judicial)

Member (Technical)

Bombay,

2-9-1986

25. *Per K.L. Rekhi CD-BOM-A No. 365/80. - The matter has been assigned to me by the President under Section 129C(5) of the Customs Act, 1962 for hearing and disposal on the aforesaid point of difference. The judgments recorded by my learned brothers of the West Regional Bench were made available to both sides before the hearing. I have heard them at Bombay today. The Department was represented by Shri G.D. Pal, S.D.R. and the respondents by Shri J.J. Bhatt, Advocate.*

26. *I have given the matter my earnest consideration. The question is whether during the period from 26-9-1975 to 17-1-1976 the vessel M.V. Anupama was a foreign going vessel or a coastal vessel. During this period, the vessel functioned as a daughter vessel to lighten the mother vessels (super-tankers) which had brought cargo from abroad and which, because of their big size, were unable to come alongside of Indian ports. I find that even if the cargo lightened off Salaya was unloaded at Marmagaoa and Calicut and not at Salaya. itself, and that lightened off Paradip was unloaded at Calcutta and not at Paradip itself, the material fact remains that M.V. Anupama functioned only to continue and complete the task of the mother vessels - that of bringing cargo from abroad and unloading them at Indian Ports. There is no evidence that during this period M.V. Anupama picked up any Indian cargo from one Indian port to unload it at another Indian port. The material facts of the present case are, therefore, similar to those decided in Calcutta and Madras High Court judgments supra. The learned representative of the Department admits that there is no contrary judgment of any other High Court or of the Supreme Court on the point. In the circumstances, in keeping with the practice of this Tribunal, I hold that the ratio of the Calcutta and Madras High Court judgments supra is binding on me. The fact that to begin with the respondents themselves had applied for conversion of the vessel as a coastal vessel cannot be held against them as estoppel once*

they realised their mistake in view of the High Court judgments and took remedial action in time. The point that Customs duty was demanded by the officers at this port or that is hardly material.

27. *I, therefore, agree with the learned Member (Judicial), reject this appeal and discharge the revision show cause notice issued by the Central Government.*

Bombay, dated 29-12-1986.

Sd/-

(K.L. Rekhi)

Member (Technical)

FINAL ORDER

28. *In view of the difference of opinion between the two Members of this Bench, who first heard the appeal of the Collector of Customs, Ahmedabad, the point of difference was referred by the President to the third Member, Shri K.L. Rekhi who has given his finding on the point of difference. Therefore, this appeal has to be decided on the basis of the majority opinion'. In majority view, the appeal of the Collector of Customs, Ahmedabad is rejected and the review show cause notice issued by the Government of India is discharged.*

Sd/-

Sd/-

(K. Gopal Hegde)

(K.S. Dilipsinhji)

Member (Judicial)

Member (Technical)

*Bombay, 31st December,
1986.*

From the above decision and the facts involved therein, it can be seen that the facts of the present case is also identical to above decision. Therefore, Ratio of the above decision is applicable in the present case. Following the above Tribunal order and the discussion made herein above by us, we are of the view that the impugned order is not sustainable, accordingly, the same is set aside. Appeal is allowed.

(Pronounced in the open court on **21/06/2024** *)*

**RAMESH NAIR
MEMBER (JUDICIAL)**

**RAJU
MEMBER (TECHNICAL)**

