

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION (L) NO.5118 OF 2020

Global Ace Shipping Lines Inc. ... Petitioner  
Vs.  
Office of the Principal Commissioner of Customs  
(Import-I) and another ... Respondents

Mr. Vikram Nankani, Senior Advocate a/w. Mr. Akshay Kolse-Patil, Mr. Prashant Asher, Mr. Naishadh Bhatia i/b. Crawford Bayley & Co. for Petitioner.

Mr. Pradeep S. Jetly, Senior Advocate a/w. Mr. J. B. Misra for Respondents.

**CORAM : UJJAL BHUYAN &  
ABHAY AHUJA, JJ.**

**Reserved on : NOVEMBER 26, 2020**

**Pronounced on: DECEMBER 10, 2020**

**P.C.** : (Per Ujjal Bhuyan, J.)

Heard Mr. Nankani, learned senior counsel for the petitioner and Mr. Jetly, learned senior counsel for the respondents.

2. Initial prayer made in the writ petition was to set aside and quash the impugned seizure memorandum dated 26.09.2020. Subsequently, following amendment of the writ petition additional prayer has been made by the petitioner to set aside and quash order dated 28.10.2020 as well as to declare Circular No.35/2017-Customs dated 16.08.2017 issued by the Central Board of Indirect Taxes and Customs, Government of India (briefly “the Board” hereinafter) as *ultra vires* the provisions of section 110-A of the Customs Act, 1962.

3. Case of the petitioner is that it is a company incorporated under the laws of Republic of Panama, having its registered office at Panama City. It is the owner of a vessel called MT Global Rani (referred to as ‘the vessel’ hereinafter).

4. In the course of business, petitioner had to carry a cargo of Bitumen from Bandar Abbas Port, Iran to Mumbai. It is stated that as per existing trade practice, due to banking restrictions all ship owners carrying cargo from Iran change documentation to show that the cargo originated in Iraq. On 15.09.2020, the cargo of Bitumen was loaded onto the vessel of the petitioner. The seller was Synergy Petrochem FZE, Sharjah and the buyer was Agarwal Industrial Corporation Limited, Taloja in the State of Maharashtra.

5. Petitioner's vessel arrived at Mumbai Port on or about 24.09.2020. On arrival, Senior Intelligence Officer, Special Intelligence and Investigation Branch (1), Mumbai issued summons to Shri. Ranjeet Singh, master of the vessel under section 108 of the Customs Act, 1962 (briefly 'the Customs Act' hereinafter). It was mentioned therein that the Senior Intelligence Officer was making an enquiry with respect to the vessel and called upon the master of the vessel to appear before him on 25.09.2020 along with relevant documents.

6. In terms of the summons, master of the vessel attended the office of the Senior Intelligence Officer who works under respondent No.1. Master of the vessel explained to the authority that it was the standard procedure for all ships importing cargo from Iran to declare the imports as being from Iraq. In this connection, he pointed out several instances. It is stated that he had also informed the authority that there was no prohibition on the import of Bitumen.

7. However, the Senior Intelligence Officer issued the impugned seizure memorandum dated 26.09.2020 seizing the said vessel. It was mentioned therein that the cargo was not loaded at Basrah Port, Iraq as per import documents filed for clearance of the goods. The documents found from the possession of the master as well as the statement of the master established that the cargo was not loaded from Basrah Port, Iraq but instead loaded at Bandar Abbas Port in Iran. Therefore, there was

reason to believe that the said vessel approximately valued at Rs.12,74,00,000.00 carrying the cargo 'Bitumen Grade VG30' covered under the bill of entry No.2262875 dated 21.09.2020 had mis-declared the country of origin as Iraq thereby rendering itself liable for confiscation under section 115 of the Customs Act.

7.1. Accordingly, the said vessel was seized under section 110(1) of the Customs Act. Since it was not practicable to physically takeover custody of the said vessel, it was handed over to the master of the vessel Shri. Ranjeet Singh under *supratnama* dated 26.09.2020 with the specific direction that he should not remove, part with or otherwise deal with the vessel except with the permission of the Special Intelligence and Investigation Branch (I), New Custom House, Mumbai.

8. Petitioner by letter dated 13.10.2020 requested respondent No.1 for provisional release of the vessel. However, there was no response.

9. Assailing the said seizure, the present writ petition came to be filed.

10. It is contended that there was no justification at all for seizure of the vessel. While the cargo has not been seized, the vessel has been seized. As a matter of fact, the cargo was cleared for home consumption. It has become a standard practice that Bitumen imported from Iran is declared as originating from Iraq solely for banking purpose. This practice is being followed by all such importers and carriers and does not in any manner affect the revenue. There is no embargo in importing Bitumen from Iran. In two recent incidents, vessels, viz, MT Clayton and MT R-Ocean had brought similar product from Iran shown as originating from Iraq. While in one case no action was taken, in the other case, the vessel was released on furnishing of bond of equivalent amount as that of the vessel and cash deposit of certain amount. Vessel in question is a specialized one having high daily operating cost.

Because of the seizure, petitioner is incurring heavy expenditure.

11. After filing of the writ petition on 23.10.2020, Additional Commissioner of Customs (Import-II), New Custom House, Mumbai passed order dated 28.10.2020 rejecting the request of the petitioner for provisional release of the vessel. As per this order, the agent of the petitioner M/s. Preetika Shipping Agency Pvt. Ltd. was informed that provisional release could be given only to the owner. Its *locus standi* as agent was doubtful. The owner should apply for provisional release and execute a bond besides furnishing bank guarantee for an amount equivalent to five times the market value of the vessel as provided under section 114AA of the Customs Act so as to secure the likely penalty that may be imposed upon adjudication. Additional bank guarantee equivalent to the market price of the cargo should also be furnished to secure the redemption fine likely to be levied. Stating that the vessel was engaged in repeated offence, it cannot be released till completion of investigation. Furthermore, the vessel is already under detention by the Directorate General of Shipping *vide* detention order dated 24.09.2020 as being not sea-worthy. As such, release of the vessel is not possible without no objection from the Directorate General of Shipping. Reference was made to the circular dated 16.08.2017 whereafter it was mentioned that provisional release should not be allowed in the cases mentioned therein including in respect of prohibited goods. Finally, it was mentioned that the offence committed by the petitioner was of grave and serious nature likely to prejudicially affect trade and friendly relations with the United States of America or with companies of United States of America. Therefore, such imports are rendered prohibited under section 11 of the Customs Act. Thus, the seized vessel does not qualify to be considered for provisional release.

12. On 29.10.2020, Mr. Jetly was requested to obtain instructions as to whether Central Government has issued any notification under section 11 of the Customs Act which has been published in the official gazette

and whether imports from the Islamic Republic of Iran to India is prohibited? Leave was also granted to the petitioner for amending the writ petition to bring the said order dated 28.10.2020 on record.

13. Thereafter, petitioner amended the writ petition.

14. Respondent No.1 has filed affidavit through Shri. Manoj Kumar Kedia, Commissioner of Customs (Import-I). It is stated that a complaint was received that one vessel by the name of MT Global Rani had berthed at Mumbai Port with the cargo containing Bitumen. Loading was shown at Port Basrah, Iraq. However, the said goods were of Iranian origin and were loaded at a port in Iran. Documents submitted by the shipping agent for the vessel were scrutinized which indicated that the goods were loaded at Basrah Port, Iraq.

14.1. When officers of respondent No.1 boarded the vessel on 25.09.2020, it was found that the vessel had arrived at Mumbai Port on 22.09.2020 and had obtained permission from the proper officer to discharge the goods whereafter all the goods on board the vessel were discharged. Statement of the master of the vessel was recorded on 25.09.2020 where he admitted that the goods were loaded at Bandar Abbas Port, Iran and not at Basrah Port, Iraq; the vessel had never entered Iraqi waters. Bogus documents to that effect were prepared.

14.2. Therefore, the vessel never entered Iraqi waters and the related documents depicting that the goods had originated from Iraq were forged by the petitioner.

14.3. Basic stand of respondent No.1 is that the goods were loaded from Bandar Abbas Port, Iran but declared port of loading as Basrah Port, Iraq. Related documents were manipulated. Port of loading was mis-declared. Thus, goods became smuggled goods liable for confiscation. Reference has been made to sections 111(m) and 115(2) of the Customs

Act. Regarding the two instances mentioned by the petitioner it is stated that in so far the vessels MT R-Ocean and MT Clayton are concerned, in the absence of relevant facts and documents, no comparison can be made and no conclusion could be reached. *Locus standi* of the agent M/s. Preetika Shipping Agency Private Limited needs to be verified.

14.4. Respondent No.1 has stated that it has come to its notice that the vessel is already under detention by the Directorate General of Shipping *vide* detention order No.3/2020 dated 24.09.2020 on the ground of unseaworthiness.

14.5. Adjudicating authority *vide* letter / order dated 28.10.2020 has rejected the request of the agent of the petitioner for provisional release of the vessel. However, it is clarified that Central Board of Indirect Taxes and Customs has not issued any notification under section 11 of the Customs Act.

15. Petitioner has filed rejoinder affidavit. It is contended that while seizure of the vessel is on one ground, the same is justified by refusing provisional release on other multiple grounds i.e., grounds beyond the one mentioned in the seizure memo. This is not permissible. Though this Court had directed the respondents to inform the Court *vide* order dated 29.10.2020 as to whether any notification has been issued by the Central Government under section 11 of the Customs Act and whether imports from the Islamic Republic of Iran to India have been prohibited, respondent No.1 in its reply affidavit has not dealt with the above aspects. In so far detention of the vessel by the Directorate General of Shipping is concerned, it is an independent and separate issue which will be dealt with separately. It has no bearing on the validity or invalidity of the seizure and the refusal to provisionally release the vessel. Respondents have sought to make out a completely new case in the reply affidavit after having found that the ground given for refusing provisional release i.e., the goods are prohibited ones under section 11 of

the Customs Act is wholly untenable. Petitioner has reiterated the instances of the two vessels MT R-Ocean and MT Clayton. While in the case of MT Clayton, it was detained in similar circumstances but provisionally released on furnishing bond of an amount equivalent to the value of the vessel with further cash deposit of Rs.10,00,000.00, in the case of the former no action was taken.

16. Mr. Nankani, learned senior counsel for the petitioner submits that petitioner is the vessel owner and not owner of the cargo imported. The imported cargo has already been released by the proper officer. It is only the vessel which has been seized. Referring to section 111(m) of the Customs Act read with section 2(16), he submits that under the said provisions, only the goods imported can be seized and not the vessel. In this connection, he has also referred to section 46 of the Customs Act. Referring to the definition of 'smuggling' in section 2(39), he submits that under the *proviso* to sub-section (2) of section 115 even in case of confiscation of conveyance, the owner is mandatorily required to be given an option to pay in lieu of confiscation of the conveyance, a fine not exceeding the market price of the goods which are sought to be smuggled or have been smuggled. Referring to clause (d) of section 111, he submits that under no circumstances the vessel can be seized after clearance of the imported goods. In so far release of two other vessels placed in identical situation, he submits that answer given by respondent No.1 is totally evasive. Instead of responding to the specific averments of the petitioner, respondent No.1 has tried to shift the burden to the petitioner when it has already furnished the details of the two identically placed vessels.

17. *Per contra*, Mr. Jetly, learned senior counsel for the respondents submits that the goods have been imported by mis-declaring the port of loading and the country of origin by filing bill of entry on the basis of bogus documents. Thus, the goods have been imported in contravention of the provisions of the Customs Act. As the goods have become

smuggled goods for contravention of the Customs Act, which was within the knowledge of the master of the vessel, the vessel used as conveyance for transportation of the smuggled goods is liable to confiscation. According to Mr. Jetly, the word 'goods' would also include the vessel in question. In this connection, he has referred to the definition of 'goods' in section 2(22)(a) of the Customs Act. Contending that respondents are not concerned with the consignments, he has referred to the provisions of sub-section (1) of section 110 as well as section 115 of the Customs Act. He has also narrated the facts in detail as mentioned in paragraph 4 of the affidavit in reply leading to seizure of the vessel.

18. Referring to section 47 of the Customs Act which deals with clearance of goods for home consumption, Mr. Nankani in response submits that the imported consignment was cleared by the proper officer for home consumption. Once it is cleared for home consumption, the consignment cannot be termed as smuggled goods. If the consignment is not smuggled goods then the vessel through which the consignment was imported cannot be accused of transporting smuggled goods. He has again emphasized on the provisions contained in sub-section (2) of section 115 and contends that even in case of confiscation of conveyance on the ground of transporting smuggled goods, the owner of the conveyance is mandatorily required to be given an option to pay fine in lieu of confiscation of the conveyance that too at the market price of the goods sought to be smuggled. He finally submits that while the seizure of the vessel is *ex-facie* illegal and is liable to be appropriately interfered with, without prejudice to the above he would alternately submit that rejection of the request for provisional release of the vessel is wholly illegal and arbitrary. Therefore, this Court may direct provisional release of the vessel.

19. Submissions made by learned counsel for the parties have been duly considered. Also perused the materials on record.



20. At the outset, we may advert to the impugned seizure memorandum dated 26.09.2020 which is extracted hereunder:-

“

Date: 26.09.2020

SEIZURE MEMORANDUM

Whereas, M. T. Global Rani under the flag of Cook Islands Voyage No.13/20 filed IGM bearing No.2262875 dated 21.09.2020 with declared port of loading as Basrah, Iraq for 2865.42 MTS of Bitumen Grade VG30 in bulk to be discharged at Mumbai port arrived and berthed at Mumbai port on 22.09.2020. M/s. Agarwal Industrial Corporation Ltd. (IEC 0309060052) have filed Bill of Entry No.8896841 dated 21.09.2020 for 2865.428 MTS of the said item.

2. On the basis of intelligence, the officers of this office boarded the said vessel on 25.09.2020 and scrutinized the documents of declaration filed through their agent M/s. Preetika Shipping Agency Pvt. Ltd. and also made enquiries with the Master of the said Vessel, Shri. Ranjeet Singh. During the preliminary investigations, it has been revealed that the said cargo, 'Bitumen Grade VG3 in Bulk' has not been loaded at Basrah Port, Iraq as per the import documents filed for clearance of the goods. The documents found from the possession of the master and the statement of the Master of the vessel clearly establish that the said cargo was not loaded from Basrah Port, Iraq but instead loaded at Bandar Abbas Port in Iran and the said vessel had never visited Iraqi waters. Further, the statement of the Master further establishes that his company had given directions to produce bogus Bills of Lading and other documents to mis-declare that the cargo was loaded at Basrah, Iraq. Therefore, there is reason to believe that the said vessel M. T. Global Rani approximately valued at Rs.12,74,00,000/- carrying the cargo 'Bitumen Grade VG30' covered under the Bill of Entry No.2262875 dated 21.09.2020 mis-declaring the Country of Origin and port of Loading as Iraq, is liable for confiscation under the provisions of Section 115 of the Customs Act, 1962.

3. Now, therefore, in exercise of the powers conferred on me by Section 110(1) of the Customs Act, 1962, I, Pankaj, Senior Intelligence Officer of S.I.I.B.(I) of New Custom House, Mumbai seize the above said vessel M. T. Global Rani valued at approximately Rs.12,74,00,000/- under the provisions of Section 110(1) of the Customs Act, 1962. As it is not practicable to physically takeover the custody of the said vessel presently berthed at 11 1DK, Mumbai Port due to the fact that the vessel requires the specialized crew for maintenance and keeping it operational and functional, the seized goods are hereby handed over to the Master of the

Vessel M. T. Global Rani, Shri Ranjeet Singh under Supratnama dated 26.09.2020 in terms of the proviso to section 110(1) of the Customs Act, 1962, with specific directions that he shall not remove, part with or otherwise deal with the vessel except with the permission of SIIB I), New Custom House, Mumbai.

sd/- illegible

26.09.2020

(Pankaj)

Senior Intelligence Officer  
SIIB (I), NCH, Mumbai”

20.1. From a perusal of the seizure memorandum as extracted above it is seen that the basic contention of the seizing authority was that the vessel was carrying cargo covered by bill of entry No.2262875 dated 21.09.2020 by mis-declaring the country of origin as Iraq and port of loading as Basrah, Iraq. Therefore, the vessel was liable to confiscation under section 115 of the Customs Act. As such in exercise of powers under section 110(1) of the Customs Act, the Senior Intelligence Officer seized the vessel whose approximate value is Rs.12,74,00,000.00. However, as physical taking over custody of the vessel was not practicable, the vessel was handed over to the master of the vessel Shri. Ranjeet Singh who was directed not to remove, part with or otherwise deal with the vessel except with the permission of the Special Intelligence and Investigation Branch.

21. Before proceeding further, we may also mention that from the pleadings and submissions it is evident that the imported goods i.e., Bitumen was cleared for home consumption under section 47 of the Customs Act before seizure of the vessel. Infact, in the hearing, Mr. Jetly had categorically submitted that respondents are not concerned with the consignment but with the vessel.

22. Keeping the above in mind, we may now advert to section 115 of the Customs Act which deals with confiscation of conveyances. While sub-section (1) deals with the instances when conveyance shall be liable

to confiscation, sub-section (2) mandates that any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation unless the owner of the conveyance or the animal proves that it was so used without the knowledge or connivance of the owner or his agent or the person in charge of the conveyance or animal. As per the proviso where such conveyance is used for carriage of goods or passengers for hire, the owner of the conveyance shall be given an option to pay fine in lieu of confiscation of the conveyance. The fine should not exceed the market price of the goods which are sought to be smuggled or the smuggled goods, as the case may be.

23. When respondents had allowed clearance of the consignments and learned counsel for the respondents had made it abundantly clear that respondents are not concerned with the consignments as such but with the vessel, a *prima facie* view may be taken that section 115 of the Customs Act more particularly sub-section (2) thereof may not be applicable. However, this is a matter which may require further investigation and adjudication, if it comes to that stage. Therefore, in the facts and circumstances of the case, it may be premature for the Court to step in at this stage to determine and adjudicate legality and validity of the seizure. However, the take away from the section is that even in the case of confiscation of conveyance used as a means of transport in the smuggling of goods, the owner of the conveyance which is used for carriage of goods or passengers for hire is required to be given an option to pay fine in lieu of confiscation of the conveyance which should not exceed the market price of the goods sought to be smuggled or smuggled. This Court has held more than once that seizure is not an end in itself. The worst possible scenario that can visit the petitioner post issuance of the seizure memorandum is confiscation of the vessel under section 115 of the Customs Act in which event *proviso* to sub-section (2) as discussed above shall come into play.

24. Therefore, on due consideration, we are of the view that instead of adjudicating on legality or validity of the seizure at this stage, it would be more appropriate to deal with the aspect of provisional release of the vessel in terms of section 110-A of the Customs Act.

25. Having said so, we may now advert to the order dated 28.10.2020 whereby request of the petitioner for provisional release of the vessel was rejected. Relevant portion of the order dated 28.10.2020 is quoted hereunder:-

“ Please refer to your letter dated 13.10.2020 on the above subject.

In this regard, please be informed that provisional release of seized conveyances including vessel can be given only to the owner of the conveyance. However, no ownership documents have been tendered along with the application. Your locus *standi* as an agent is not free from doubt in absence of legally enforceable contract between the foreign company claiming to be the owners and the Indian agent.

It has come to notice that the vessel owners have an office in India. Therefore, they alone should apply for provisional release and execute bond and bank guarantee for an amount equivalent to five times the market value of the vessel as provided under Section 114 AA of the Customs Act, 1962 to secure the likely penalty imposed upon the eventual adjudication of the case. Moreover, additional BG equivalent to market price of the goods being carried by the vessel has to be executed to secure the Redemption Fine likely to be levied under Section 115(2) of the Act *ibid*.

It has also come to notice that the vessel Global Rani is engaged in repeated offence and this particular voyage carrying the Iranian origin bitumen is the fourth such incidence.

Statement of the Master of the vessel has not been recorded under Section 108 covering all such past offences. Therefore, the vessel cannot be released till the investigation is complete.

It has also come to notice that this vessel is already under detention by DG Shipping vide Detention order dated 24/09/2020 for not being sea-worthy. The ship is alleged to be in violation of safety norms prescribed by DG Shipping and poses a danger for Human & Marine Life. Therefore, this office cannot release the seized vessel without no objection from the

O/o DG Shipping.

Your attention is invited to circular No.35/2017-Cus. dated 16.08.2017 issued by CBIC prescribing guidelines for provisional release of seized imported goods pending adjudication under Section 110A of the Customs Act, 1962. Under Para 2, it is stated that provisional release shall not be allowed in the following cases:

- i. Goods prohibited under the Customs Act, 1962 or any other Act for the time being in force;
- ii. Goods that do not fulfill the statutory compliance requirements / obligations in terms of any Act, Rule, Regulation or any other law for the time being in force;
- iii. Goods specified in or notified under Section 123 of the Customs Act, 1962;
- iv. Where the competent authority, for reasons to be recorded in writing believes that the provisional release may not be in the public interest.

From the investigation report, it appears that the offences enumerated thereunder are very grave and of serious nature likely to prejudicially affect trade and friendly relations with the United States of America or U.S. Companies. Such imports therefore are rendered prohibited under section 11 of the Customs Act, 1962. Thus, the seized imported goods and the seized vessel do not qualify to be considered for provisional release in terms of these guidelines.”

26. From a perusal of the aforesaid order we find that provisional release has been declined on the following grounds:-

1. *Locus standi* of the agent of the petitioner was doubted in the absence of ownership and contractual documents between the petitioner and the agent;
2. Vessel owner has an office in India. They alone can apply for provisional release. They have to execute bond and bank guarantee for an amount equivalent to five times the market value of the vessel in terms of section 114AA of the Customs Act to secure the likely penalty that may be imposed. Additional bank guarantee equivalent to market price of the goods has to be furnished to secure redemption fine that may

be levied;

3. Vessel has been engaged in repeated offence, the present one being the fourth, carrying Iranian origin Bitumen. Investigation in this regard is not yet completed;
4. Vessel is under detention by Directorate General of Shipping since 24.09.2020 as being not sea-worthy. Therefore, the vessel cannot be released without no objection from the Directorate General of Shipping;
5. As per circular dated 16.08.2017 of the Board, provisional release under section 110-A shall not be allowed in the case of prohibited goods; and finally,
6. Offences made by the petitioner are very grave and of serious nature likely to prejudicially affect trade and friendly relations with the United States of America or companies of United States of America. Therefore, such imports have been rendered prohibited under section 11 of the Customs Act.

27. Before we deal with the above grounds, it would be apposite to advert to section 110A of the Customs Act. By the Taxation Laws (Amendment) Act, 2006, section 110-A was inserted in the Customs Act with effect from 13.07.2006. Since this provision is relevant, the same as it stands today is extracted hereunder:-

**“110A. Provisional release of goods, documents and things seized [or bank account provisionally attached] pending adjudication.** - Any goods, documents or things seized [or bank account provisionally attached] under section 110, may, pending the order of the [adjudicating authority], be released to the owner [or the bank account holder] on taking a bond from him in the proper form with such security and conditions as the [adjudicating authority] may require.”

28. This provision was examined by us in *Sidharth Vijay Shah Vs. Union of India*, decided on **08.09.2020** and it was held as under:-

“12. From a reading of section 110-A, as extracted above, it is evident that any goods, documents or things seized or bank account provisionally attached under section 110 may, pending the order of adjudicating authority, be released to the owner or

the bank account holder on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require. Thus, this provision confers a right on the owner to seek provisional release of seized goods etc., while at the same time a corresponding discretionary power is vested on the adjudicating authority who may release the seized goods etc. upon a bond with such security and conditions pending order of the adjudicating authority. Though much emphasis has been placed by the respondents on categorization of the imported vehicle as a prohibited good as defined under sub-section (33) of section 2, we do not find any limitation imposed in section 110-A that a good which is categorized as a prohibited good under section 2(33) cannot be subjected to provisional release under section 110-A. The words “goods, documents and things seized” are expressions of general import without any qualifications and / or are not accompanied by any qualifying words. Therefore, no restriction or restrictive meaning can be read into the said expressions which is not contemplated by the statute.

13. As a matter of fact, section 110A provides a pragmatic mechanism to facilitate provisional release of seized goods etc. to the owner pending adjudication but at the same time protecting the interest of the revenue. Keeping the above in mind, the provision is required to be understood and applied.”

29. From what we have held above, contention of the respondents that provisional release shall not be allowed in the case of prohibited goods does not hold good. Therefore, after the High Court clarification reliance placed by respondent No.1 on the Board’s circular dated 16.08.2017 is totally misplaced. To that extent it would not be necessary to examine the *vires* of the said circular.

30. Regarding the ground given that the vessel in any case is under detention by the Directorate General of Shipping and therefore, cannot be released without having no objection from the said authority, we are of the view that the same would not preclude exercise of power under section 110A of the Customs Act. As pointed out by learned counsel for the petitioner that is a separate issue not raised in the present proceeding. Therefore, Court is not called upon to adjudicate or deliberate upon the said aspect.

31. Regarding the allegation that the vessel has been engaged in repeated offence and that investigation in this regard is not yet complete, the same in our view would also not come in the way of exercise of power under section 110-A of the Customs Act. That apart, what the customs authorities are stating through this ground is that the vessel has been engaged in carrying Iranian origin Bitumen. While mis-declaration of country or port of origin could be a matter of investigation, carrying Iranian origin Bitumen by itself cannot be an offence. We may mention that in our order dated 29.10.2020 we had specifically asked learned counsel for the respondents to obtain instructions as to whether imports from the Islamic Republic of Iran to India is prohibited? No instructions in this regard were placed before us on behalf of the respondents. Affidavit in reply filed by respondent No.1 is also totally silent in this regard. On the other hand, Mr. Nankani, learned senior counsel for the petitioner asserted at the time of hearing that there is no prohibition in importing Bitumen from the Islamic Republic of Iran to India.

32. In so far *locus standi* of the agent of the petitioner is concerned, this is a procedural aspect between the customs authorities (adjudicating authority) and the owner of the vessel i.e., the petitioner.

33. Regarding the last ground given for refusing provisional release i.e., the offences made by the petitioner are very grave and of serious nature likely to prejudicially affect trade and friendly relations with the United States of America or companies of United States of America which has rendered such imports prohibited under section 11 of the Customs Act, all that we can say is that such a ground is to be recited only to be rejected. In so far offences allegedly committed by the petitioner are concerned, it has got two aspects. As already discussed above, mis-declaration of country or port of origin is a different matter. Bringing in goods from Iran by showing them as being brought from Iraq is a matter which may require investigation but it cannot be said that



importing goods from Iran, in this case Bitumen, is an offence. There is apparently no prohibition for importing Bitumen from Iran to India. Question of prejudicially affecting trade and friendly relations of India with the United States of America or companies of the United States of America because of imports from Iran does not arise. Whether we should allow imports from Iran and whether such imports will affect friendly relations of India with United States of America is a matter for the Government of India to take a call. It is not for the Additional Commissioner of Customs acting as the adjudicating authority to wade into such matters which is way beyond his competence. In fact section 11 of the Customs Act deals with power to prohibit importation or exportation of goods. Sub-section (1) makes it abundantly clear that if the central government is satisfied with any of the purposes specified in sub-section (2), it may, by notification in the official gazette, prohibit the import or export of goods of any specified description either absolutely or subject to such conditions. The purposes mentioned in sub-section (2) includes amongst others prevention of dissemination of documents containing any matter which is likely to prejudicially affect friendly relations with any foreign state or is derogatory to national prestige (clause t). First and foremost, it is the job of the central government whether to prohibit importation or exportation of any goods; the central government must be satisfied that such prohibition has become necessary to prevent dissemination of documents containing any matter likely to prejudicially affect friendly relations with any foreign state or is derogatory to national prestige which certainly would not be applicable to the present case; finally, upon satisfaction of the central government, notification has to be issued in the official gazette.

33.1. Respondent No.1 in his affidavit has admitted that no such notification under section 11 has been issued by the central government. If that be so then the Additional Commissioner acting as the adjudicating authority had clearly overstepped his jurisdiction in saying that the imported goods have been rendered prohibited under section 11 of the

Customs Act. This is factually incorrect and legally untenable. Resort to such falsehood by the Additional Commissioner is unacceptable. Being an adjudicating authority he has to act fairly and judiciously. It flies in the face to resort to such untenable contentions more so when the imported goods have been cleared for home consumption. Such expression of incorrect and untenable views by the adjudicating authority clearly reveals his biased mind which has vitiated the rejection order dated 28.10.2020. On this ground itself the said order is liable to be set aside and quashed.

34. However, we would like to advert to the final ground given which is again contradictory to the other grounds refusing provisional release. As per this ground, the vessel can be provisionally released upon execution of bond and bank guarantee for an amount equivalent to five times the market value of the vessel as provided under section 114AA of the Customs Act to secure the likely penalty that may be imposed upon eventual adjudication plus additional bank guarantee equivalent to the market price of the goods being carried by the vessel in order to secure the redemption fine likely to be levied under section 115(2) of the Customs Act.

34.1. To appreciate this ground let us examine the provisions of sections 114AA and 115(2) of the Customs Act.

34.2. Section 114AA says that if a person knowingly or intentionally makes, signs or uses or causes to be made, signed or used any declaration, statement or document which is false or incorrect in any material particular in the transaction of any business for the purposes of the Customs Act shall be liable to a penalty not exceeding five times the value of goods.

34.3. According to Mr. Jetly, the word 'goods' used in section 114AA would include a vessel and in the present case it means the vessel in

question; therefore imposition of this condition is justified.

34.4. Before we proceed to section 115, we may briefly refer to section 2(22) of the Customs Act which defines the word “goods”. As per this definition, “goods” includes-

- (a) vessels, aircrafts and vehicles;
- (b) stores;
- (c) baggage;
- (d) currency and negotiable instruments; and
- (e) any other kind of movable property.

34.5. So as per this definition, in an appropriate case, “goods” would include vessels.

34.6. We have already referred to and analyzed section 115 more particularly sub-section (2) thereof and the proviso to sub-section (2). If a conveyance is used as a means of transport in the smuggling of any goods, it shall be liable to be confiscated. However, it will not be confiscated if the owner proves that it was so used without his knowledge or connivance or that of his agent and the person in charge of the conveyance. As per the proviso, where such conveyance is used for carriage of goods or passengers on hire, the owner of the conveyance has to be given an option to pay fine in lieu of confiscation of the conveyance. The fine shall not exceed the market price of the goods which are sought to be smuggled or the smuggled goods, as the case may be.

35. A conjoint reading of sections 114AA and 115 in the backdrop of the definition of “goods” given in section 2(22) would go to show that the goods referred to in those two sections are goods which are sought to be smuggled in or the smuggled goods. It is another matter that in this case the goods imported i.e., the consignments have already been released. Even then if we look at the two provisions textually, the word

'goods' referred thereto can mean the goods carried by the conveyance (in this case vessel) and not the conveyance (in this case vessel). The vessel has been seized because the proper officer had reasons to believe that it is liable to confiscation under section 115. If it is confiscated under section 115 then an option is required to be given to the owner of the vessel which is used for carriage of goods for hire to pay fine in lieu of confiscation of the vessel which should not exceed the market price of the goods i.e., the consignments sought to be smuggled or smuggled. Therefore, the justification given for imposition of the condition that there should be bank guarantee for an amount equivalent to five times of the market value of the vessel is wholly untenable.

36. Petitioner had specifically averred in the writ petition that a vessel by the name of MT R-Ocean was similarly placed like that of the vessel in question. The vessel MT R-Ocean was allowed to discharge similar cargo and no action was taken. The other vessel MT Clayton which was detained in similar fashion was granted provisional release on furnishing bond of Rs.12,00,00,000.00 which was the value of the vessel and cash deposit of Rs.10,00,000.00. In so far these averments are concerned, respondent No.1 in the reply affidavit simply shrugged off the same by saying that in the absence of relevant facts and documents, there cannot be any comparison and conclusion. This is an evasive denial by respondent No.1 and an evasive denial is no denial in the eye of law; it amounts to admission.

37. Even from a perusal of the impugned seizure memorandum it is seen that the officer seizing the vessel had recorded that it was not practicable to physically takeover custody of the vessel. Therefore, custody of the vessel has been handed over to the master of the vessel with the condition that he shall not remove, part with or otherwise deal with the vessel except with the permission of the Special Intelligence and Investigation Branch. It may be mentioned that in the seizure memorandum itself the value of the vessel has been mentioned at

Rs.12,74,00,000.00 approximately.

38. Therefore, on due consideration and without going into the challenge to the impugned seizure memorandum dated 26.09.2020, we do not find any good reason to decline provisional release of the vessel.

39. Thus having regard to the discussions made above and without expressing any final opinion on merit *vis-a-vis* the impugned seizure memorandum, we set-aside the order dated 28.10.2020 and direct respondent No.1 to grant provisional release of the vessel MT Global Rani to the petitioner under section 110A of the Customs Act on furnishing a bond of Rs.12,74,00,000.00 with further deposit of Rs.25,00,000.000 in the form of bank guarantee of a nationalised bank. Needless to say such provisional release shall be subject to completion of necessary formalities including clearance from the Directorate General of Shipping, Government of India. This will also be without prejudice to such action that may be taken by the respondents as is permissible in law.

40. Since we have not expressed any final opinion on merit, all contentions are kept open which may be raised by the parties at subsequent stage.

41. Writ petition is accordingly allowed to the above extent without however any order as to costs.

42. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

**(ABHAY AHUJA, J.)**

**(UJJAL BHUYAN, J.)**