

HIGH COURT OF GUJARAT (D.B.)**STATE OF GUJARAT & 2****Versus****RELIANCE INDUSTRIES LTD R/O AT 3RD FL , MAKER CHAMBERS & 5****Date of Decision:** 08 September 2011**Citation:** 2011 LawSuit(Guj) 1011**Hon'ble Judges:** [S J Mukhopadhaya](#), [J B Pardiwala](#)**Eq. Citations:** 2013 6 RCR(Civ) 228, 2012 1 GCD 144**Case Type:** Letters Patent Appeal**Case No:** 6 of 2011**Acts Referred:**[Bombay Stamp Act, 1958 Sec 2\(1\)](#), [Sec 68](#), [Sec 3](#)**Final Decision:** Application disposed**Advocates:** [Abhishek Manu Singhvi](#), [B S Patel](#), [Dhaval D Vyas](#), [K S Nanavati](#), [Mauna M Bhatt](#), [Mihir Thakore](#), [Nanavati Associates](#), [Navin Pahwa](#), [P R Nanavati](#), [S N Shelat](#), [S N Soparkar](#), [Sejal K Mandavia](#), [Thakkar Associates](#)**Cases Referred in (+): 15****S. J. Mukhopadhaya, J.**

[1] As common question is involved in all these cases and common judgment dated 24th February, 2010 passed by the learned Single Judge is under challenge, they were heard together and disposed by this common judgment.

[2] These appeals arise out of the common judgment dated 24th February, 2010 passed by the learned Single Judge in Special Civil Application No. 1490 of 2007 and other connect writ petitions.

[3] The respondents-private writ petitioners challenged the notices issued by authorities and the guidelines issued for charging stamp duty on 'bill of entry'. Learned Single Judge, by impugned judgment dated 24th February, 2010, while holding that deliveries are affected against 'bill of lading', held that it is a document of title enabling

the holder or transferee/endorsee thereof to take delivery of the goods. 'Bill of entry', which is filed with the Customs authorities so as to enable them to proceed to decide the question about necessity or otherwise of payment of customs duty, is not an instrument creating any right or liability and does not amount to a delivery order within the meaning of Art. 24 of the Bombay Stamp Act, 1958 [Stamp Act for short].

[4] The questions involved in the present cases are;

[i] Whether stamp duty is liable to be paid on the basis of 'bill of entry' and such 'bill of entry' is a delivery order in respect of goods, i.e. an instrument entitling any person to the delivery of any goods; and

[ii] Whether 'bill of entry' constitutes 'an instrument' and/or document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded qua entitlement of delivery of goods, within the meaning of Sec.2[1] read with Entry 24 of Schedule-I of the Bombay Stamp Act, 1958 as applicable to Gujarat?

[5] Facts of one of the leading cases will show the cause of action for which the respondents-private writ petitioners preferred writ petitions before this Court.

[6] On 30th May, 2006, Tariff Manager, Kandla Port Trust intimated about the procedure to be followed for recovery of stamp duty. On 29th March, 2006, a Circular was issued by the Superintendent of Stamps about amended Stamp Act, drawing attention to Art. 24 of Schedule-1. On 21st November, 2006, Deputy Collector, Stamp Duty, addressed a letter to the Port Officer, Jamnagar, intimating about chargeability of instrument to stamp duty when goods are delivered to M/s. Reliance Industries, Gujarat State Fertilizer Corporation and Essar Steel Limited at Sikka Port, respondents in respective appeals.

[7] On 30th December, 2006, a notice was issued by Deputy Collector, Stamp Duty, requesting Essar Steel Limited, one of the respondents in the respective appeal, to provide information as mentioned in the said notice to the said office, to which a reply was submitted by the Essar Steel Ltd.

[8] Having noticed that the respondent authorities have taken step to charge stamp duty on the basis of 'bill of entry' submitted by parties, treating it as delivery order in respect of goods entitling persons to the delivery of goods, writ petitions were preferred before this Court.

[9] The said writ petitions were heard and disposed of by the learned Single Judge by common judgment dated 24th February, 2010, whereby the learned Single Judge has

declared that since the goods are delivered in the same name to party in the said petitions, it is not necessary to obtain Stamp Duty Clearance . Learned Single Judge consequently quashed the Circular dated 18th/30th December, 2007 issued by the Gujarat Maritime Board.

[10] Mr.S.N. Shelat, learned Sr. Advocate, appearing with Government Pleader on behalf of the State of Gujarat would submit that there was no cause of action in either of the cases and, therefore, learned Single Judge ought to have dismissed the writ petitions being premature. He would further contend that the learned Single Judge, while setting aside the Circular dated 18th/30th December, 2006, observed that it has been issued by the Gujarat Maritime Board [Maritime Board for short] and thereby committed a mistake. The Circular dated 29th March, 2006 referred to by the learned Single Judge is not on the record of the Special Civil Applications. The Circular dated 10th January, 2007 issued by the Maritime Board to the Port Officer, Magdalla, is about the action to be taken before grant of No Demand Certificate as regards payment of stamp duty. The Circular quashed by the learned Single Judge is not the Circular, but a notice issued to the writ petitioners under Sec.68 of the Bombay Stamp Act and not an order of assessment. It is an enabling power to enter the premises and inspect the documents where authorized officer has reasons to believe that any of the instruments specified in Schedule-I have not been charged or incorrectly charged. This notice is not an order of assessment and the writ petitioners could have filed reply and explanation to the authorities.

[11] According to the appellants-State of Gujarat, the minor ports within the State of Gujarat are controlled and regulated by the Gujarat Maritime Board. There are private ports, but they are regulated by the Gujarat Maritime Board. The authorized officer looks after the importation and insists on presentation of 'bill of entry' import manifest/import report.

[12] In case of private jetty, Gujarat Maritime Board authorizes an officer who exercises administrative control. Though it is termed as 'private jetty', its ultimate control and ownership are with the Gujarat Maritime Board.

[13] In respect of captive jetty, Gujarat Maritime Board entrusts the same to the authorized officer who can be an officer from the Customs Department. The provisions of Customs Act operate in respect of Gujarat Maritime Board jetties, private jetties and captive jetties.

[14] Mr. Shelat would submit that the stand taken by writ petitioners that the products were directly transferred through pipeline or private jetty to their bonded storage tanks situated outside the premises of the port, they have never been stored in the

warehouse or deposited in the wharf, cannot be accepted as the bonded storage tank is nothing but a private warehouse, which requires compliance of provisions of Secs. 58 to 60 of the Customs Act, 1961 [Customs Act for short] Under Sec. 62 of the Customs Act, under the control of Proper Officer over the warehoused goods. The imported goods can never be unloaded until entry inward is granted and they are specified in the port manifest/import reports for being unloaded at specified Customs Station. The importation takes place as soon as imported goods enter territorial waters of the country.

[15] As soon as the vessels containing products arrive at the port or the dock, they are required to file 'bill of entry' for the purpose of warehousing and for imported petroleum products being conveyed out of the bonded storage tanks. This is nothing but 'bill of entry' for home consumption.

[16] Referring to Sec. 2[4] read with Sec.46 of the Customs Act, learned Senior Counsel would contend that 'bill of entry' is a document which entitles the writ petitioners to take delivery of goods and, therefore, is a delivery order as defined under Art. 24 of Schedule-I read with Sec.2[1] of the Stamp Act.

[17] Learned Counsel would further contend that Secs. 30 to 33 will provide that no unloading of goods is permitted as mentioned in the import manifest, only at the place which is a place approved for the purpose under the supervision of the Customs Officer till they are cleared for home consumption. The importer cannot take delivery of goods dispatched through pipelines and remain in the custody of the port authority till they are cleared for home consumption. The physical delivery from bonded storage tanks takes place only after 'bill of entry' for home consumption is filed. Thus, the 'bill of entry' entitles the person named to the delivery of the products.

[18] Mr. Shelat relied on the decision of the Allahabad High Court in the case of [Ramashanker Pathak v. Collector](#), 1971 AIR(All) 287. In the said case, while interpreting Sec.3 and Entry 4 charging stamp duty on the affidavit, the High Court examined the scope of Sec.3 and held that every document by which any right or liability is created or purports to be created, transferred, limited, extended and extinguished, is an instrument and also includes a document by which such liability, right or liability is only recorded, even though a document itself does not create such right or liability. The intention is to make a distinction between an instrument which itself forms a legal transaction creating a right or liability, and instrument which itself does not form such legal act, but only subsequent record of act in law.

[19] Reliance was placed on the decision of Bombay High Court in the case of [Li Taka Pharmaceuticals Ltd v. State of Maharashtra and others](#), 1997 AIR(Bom) 7. In the said

case, the Bombay High Court had an occasion to examine the contents of the definition occurring in the Bombay Stamp Act. The Bombay High Court held that it is not the transaction of purchase and sale which is struck at.

[20] Reliance was also placed on the decision of the Supreme Court in the case of [Purshotam H. Jadye & Ors v. V.B. Potdar](#), 1966 AIR(SC) 856, wherein, the Supreme Court noticed the meaning of 'instrument' and defined the same. Some other case laws were also referred, wherein, definition of the word 'instrument' is widely worded, which will be discussed at appropriate stage.

[21] Referring to Art. 24, learned Senior Counsel appearing on behalf of the State would contend that any instrument entitling any person to delivery of any goods lying in any dock or port, or in any warehouse in which goods are stored or deposited, is liable to be charged for stamp duty if the value of the goods exceeds one hundred rupees. It, therefore, provides that if delivery were to be received from the dock, warehouse and any instrument by which any person named is entitled to delivery, the said instrument requires to be affixed by stamp duty.

[22] Learned Senior Counsel would submit that Art.24 being comprehensive, language being clear and reflects the intention of the legislature, no second meaning can be given to the same. Art. 24 does not provide that any person entitled to receive goods should prove ownership. The writ petitioners are entitled to delivery of goods lying in docks or port or any of the warehouses, on the presentation of the 'bill of entry'. The 'bill of entry' is an instrument charged under Art. 24 as on presentation thereof, the goods are delivered.

[23] The 'bill of entry' is defined under Sec.2[4] of the Customs Act to mean 'bill of entry' referred to in Sec.45. All goods are to be unloaded in Customs area and remain under the custody of the officer so authorized by Commissioner of Customs till they are cleared for home consumption or warehouse. Sec.46 mandates that importer of any goods shall make entry thereof by presenting to the proper officer a bill of entry for home consumption or warehousing in the prescribed form.

Sec.47 provides that where proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under the Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption. Under Sec.68, clearance of warehoused goods for home consumption can be taken and it can be cleared only after 'bill of entry' is presented to the proper officer.

[24] It is contended that Central Board of Excise has made regulations known as Bill of Entry [Forms] Regulations, 1976, which provides prescribed form of 'bill of entry'. It is the 'bill of entry' which is required to be charged under Art. 24 of the Stamp Act, it being delivery order. It is an instrument on the presentation of which goods are delivered from the warehouse or from the dock or port.

[25] He would further contend that 'bill of lading' and 'bill of entry' are two different instruments, 'bill of lading' is charged for stamp duty under the Indian Stamp Act. It is a document of title used by carriers. It defines a contract of carriage which a carrier undertakes to deliver goods against certain documents, but only provides title of goods. It is a receipt given by a master of receipt acknowledging that the goods specified in the bill have been put on board.

[26] He would further contend that warehouse keeper or proper officer will not deliver goods on presentation of the 'bill of lading'. 'Bill of entry' is not a procedural formality. It has to be prepared and lodged to proper officer in prescribed form. Irrespective of whether importer is owner of the goods or not, when he presents the 'bill of entry' for seeking delivery of goods, the said 'bill of entry' is required to be charged with the stamp duty. 'Bill of lading' is not required to be produced at the time of delivery of goods by the importer when he seeks delivery from warehouse, dock or port or wharf. If any document is necessary to receive the goods from the warehouse or from the dock or port and the said document entitles the person to the delivery of goods, it falls within the definition of Sec.3 of the Stamp Act read with Art. 24. Charging event is on presentation of the instrument by which the writ petitioners are entitled to receive the goods. By the said instrument, there is an obligation cast on the Port officer or warehouse officer to deliver the goods.

[27] He placed reliance on the Supreme Court decision in the case of [Bharat Commerce & Industries v. Collector of Customs](#), 1997 93 ELT 653, wherein, the Supreme Court held that filing of the bill of entry in the prescribed form is not a procedural formality. It is to be prepared and lodged with the proper officer in prescribed form. Reliance is also placed on the Bombay High Court decision in the case of [Chawgle & Company v. Union of India](#), 1988 38 ELT 401, which has been distinguished.

[28] Mr. Shelat submitted that the Court cannot construe any taxing statute by any supposed intention of the legislature. In a fiscal legislation, a transaction cannot be taxed on any doctrine of substance of matter as distinguished from its legal signification for a person is not liable to be taxed on the supposed spirit of law or by inference or any analogy. In support of such submission, he placed reliance on some of

the case laws, but it is not necessary to refer them in view of our findings as recorded hereafter.

[29] Mr. Abhishek Manu Singhvi, learned Senior Advocate, appearing on behalf of the respective respondents made arguments on behalf of the respondent-writ petitioners. Mr. Mihir Thakore, Mr. B.S. Patel, Mr. S.N. Soparkar, Sr. Advocate, Mr. P.R. Nanavati, Mr. Navin Pahwa for M/s. Thakkar Associates, Mrs. Mauna M. Bhatt and Mr. Dhaval D. Vyas, learned advocates appearing on behalf of the respective respondents adopted such arguments or added to the same. According to Mr. Singhvi, learned Sr. Counsel, the test is not whether without the bill of entry, goods can be cleared or not. Correct test is whether bill of entry passes title or delivery. There may be some cases of entrustment of some kind like bailing, but the respondents-writ petitioners are not concerned with such matter. It is submitted that the respondents deal with crude oil through their captive jetties. The question is whether such duty is leviable on the basis of such bill of entry submitted by an importer and can be said to be a delivery order in respect of the goods, i.e. whether it is an instrument entitling a person to delivery of any goods. Further, according to the learned Sr. Counsel, Bill of entry is not an instrument as defined under Sec.2[1] of the Stamp Act and it is not a document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded qua entitlement of delivery of goods.

[30] According to the one of the respondents, namely, Reliance Industries Limited, it imports raw material containing, inter alia, crude oil and also non-liquid cargo for their refinery at Jamnagar. For receiving such raw material, the Reliance Industries Limited has constructed captive jetties at the Port of Sikka. The respondents also receive imported cargo at other ports in Gujarat. Learned counsel highlighted the apparatus for discharge of the cargo as described herein below.

Captive Jetties:

[31] The captive jetties of the respondent Reliance Industries Limited, at the Port of Sikka consists of [i] 5 Single Point Mooring System [SPMs]; [ii] 1 marine jetty [with 5 berths] and; [iii] 1 Ro-Ro Jetty [Roll-on, Roll-off Jetty].

SPMs: The SPMs are systems installed in deep sea, at a distance of 12 kms from the Jetty Raiser. They consist of a floating structure anchored to the sea-bed by piles through chains. Floating hose strings and under boy hoses are connected to the SPM to receive crude from tankers and deliver to Storage Tank Farm via Crude Pipelines.

Marine Jetty:

[32] This jetty is located at a distance of about 4.9 Kms into the sea. It is connected by a trussel [akin to a bridge] on which product and crude pipelines are laid. The submarine pipe from the SPMs travels all along this jetty.

Ro-Ro Jetty:

[33] The Roll-on, Roll off Jetty also known as Lift on, lift off . Jetty is a regular lading place for rolling stock cargo which does not require cranes to be loaded or off-loaded, but is driven on and off the ship s decks e.g., used to load and unload project cargo, other solid cargo. It is a jetty which is attached to the earth/the sea-shore by an earthen bund which extends approx 1.5 kms into the sea from the sea-shore.

[34] According to learned Senior Counsel appearing on behalf of the respondent-Reliance Industries Limited, the practice that is followed for discharge of oil from ships is that as and when a ship, carrying cargo consigned for these respondents arrive at such jetty, i.e. SPM/Marine Jetty, the cargo in the ship s tanks is directly pumped out upon/into the shore based storage tanks, through the jetty and the pipelines between the jetty and the storage tanks, against production of the bill of lading . The cargo is neither delivered nor entrusted to the Port authorities nor are Port authorities involved in the delivery of cargo unto these respondents.

[35] For their non-liquid cargo, the same is delivered at the Ro-Ro Jetty to the respondents directly against the production of bill of lading . Delivery of cargo is, thus, directly from the consignor/carrier to the consignee/importer. It is submitted that at non-captive jetties at the other ports, the goods are discharged at the port and delivery is obtained through the Port authorities against production of bill of lading naming the importer as the consignee or the endorsee, as the case may be.

[36] Thereby, in all cases of delivery, both at the captive and non-captive jetties, delivery is against bill of lading issued by the carrier and it is marked or endorsed to the consignee/importer. In case of captive jetties, the delivery is taken directly from the carrier, while in case of non-captive jetties, delivery is taken through the Port authorities. But in every case, document entitling a consignee/importer to the delivery is bill of lading .

[37] Bill of lading is a document of title signed by the ship owner or by the master or other agent of the ship owner which states that certain specified goods have been shipped on a particular ship, which purports to set out the terms on which such goods have been delivered to and received by the ship. The bill of lading is well-known mercantile document of title, which is transferred in the business world by endorsement, passing to the consignee, good title to the goods covered by such bill of lading . Therefore, according to the respondents, cargo is delivered to the

consignee/importer against the relevant bill of lading , which alone entitles the consignee to the delivery of the goods comprised therein. There is no delivery order issued by any one in respect of the goods discharged at the Port.

[38] It is also contended that the process of taking delivery, since it involves importation of the goods into the country, is connected with regulatory and sovereign functions of the State, these functions include, in the case of goods, [a] identity/safety/security related regulation and [ii] Government taxation/fees/revenues related regulation. The bill of entry , therefore, cannot be stated to be an instrument or document of title entitling any one to get delivery of the goods. It only pertains to permission to import and assessment for collection of sovereign taxation.

[39] Learned Senior Counsel placed reliance on the relevant provisions of the Bombay Stamp Act and the Customs Act, 1962 as also the decisions rendered by the Supreme Court and other Courts.

[40] Learned Senior Counsel for the parties also addressed the Court on the perspective of bill of entry and bill of lading referring to different provisions of the Customs Act, 1962.

[41] Entry 24 of the Stamp Act reads as under:

Delivery order in respect of goods, that is to say, any instrument entitling any person therein named or his assigns or the holder thereof, to the delivery of any goods lying in any dock or port, in any warehouse in which goods are stored, or deposited on rent or hire, or upon any wharf, [when such goods exceed in value one hundred rupees] .

[42] From the aforesaid provision, it would be evident that duty is payable on any instrument which entitles any person therein named or assigned or holder thereof to get delivery of any goods lying in the dock or port, or in any warehouse in which goods are stored or deposited.

[43] Sec.2[1] of the Stamp Act defines an instrument , which reads as follows:

[1] instrument includes every document by which any right or liability is, or purports to be, created, transferred, limited ,extended, extinguished or recorded but does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt.

Explanation: The term document also includes any electronic record as defined in the clause [t] of sub-section [1] of Section 2 of the Information Technology Act, 2000.

[44] The question whether bill of entry is an instrument within the meaning of Sec. 2[1] of the Stamp Act, cannot be decided in isolation without noticing the relevant entry of Schedule-I enabling the authorities to charge stamp duty on such instrument. Bill of entry, in commercial parlance can be defined to be an instrument or strictly looking to the provisions of Sec.2[1], may be an instrument, but if such document does not entitle any person named or his assigns or the holder thereof of delivery of goods lying in any dock or port, in any warehouse in which goods are stored or deposited on rent, then, it cannot be called to be an instrument for the purpose of Entry 24 of the Stamp Act.

Delivery order so understood is in the nature of document of title to the goods.

[45] Sec.2[4] of the Sale of Goods Act defines document of title of goods as follows:

document of title of goods includes a bill of lading, dock warrant, warehouse keeper's certificate, wharfinger's certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery the possessor of the document to transfer or receive goods thereby represented.

[46] Even in commercial parlance, a delivery order is understood as a written order or instruction by the bailer of goods to a bailee to deliver the goods to the person mentioned therein.

[47] In P. Ramanath Iyer's Law Lexicon, delivery order is explained as under:

The name is used to describe both a written order by the bailer of goods, directing the warehousemen or other bailee to deliver them to the deliverer and a written undertaking by the person in possession of goods that he himself will deliver them.

[48] Mulla in his work Sale of Goods has explained delivery order as under:-

A delivery order is an order by the owner of goods to a person holding them on his behalf directing him to deliver them to a person named in the order.

[49] The Supreme Court, in the case of [State of A.P. v. Kolla Sree Ramamurthy](#), 1962 AIR(SC) 1585, reiterated the correctness of the view taken in Bayyana's case. In the said case, the Court was concerned with delivery order issued by the seller directing delivery of goods as per the contract, which was handed over to the buyer on his honouring a hundi for the value of the goods. The delivery order was endorsed to the subsequent buyer by the original buyer, enabling the endorsee to take delivery. Such endorsement was treated as a sale of goods by the original buyer to the subsequent buyer.

[50] Therefore, the main question that arises is whether bill of entry is a delivery order attracting stamp duty under Art.24 of the Stamp Act.

[51] As regards the term bill of lading , the Supreme Court, in the case of [J.V.Gokal & Co. \[Private\] Ltd. V. Asst.Collector of Sales Tax](#), 1960 AIR(SC) 595, held as under:

A bill of lading is a writing signed on behalf of the owner of the ship in which goods are embarked, acknowledging the receipt of the goods and undertaking to deliver them at the end of the voyage subject to such conditions as may be mentioned in the bill of lading . It is well-settled in commercial world that a bill of lading represents the goods and the transfer of it operates as a transfer of the goods.

[52] The Supreme Court, in the said case also quoted with approval the following paragraph from the judgment of [Bowen, L.J., Sanders Bros. v. Maclean & Co](#), 1883 11 QB 327:

The law as to the endorsement of bills of lading is as clear as in my opinion the practice of all European merchants is thoroughly understood. A cargo at sea while in the hands of the carrier is necessarily incapable of physical delivery. During this period of transit and voyage, the bill of lading by the law merchant is universally recognized as its symbol, and the endorsement and delivery of the bill of lading operates as a symbolical delivery of cargo. Property in the goods passes by endorsement and delivery of the bill of lading, whenever it is the intention of the parties that the property should pass just as under similar circumstances the property would pass by an actual delivery of the goods. And for the purpose of passing such property in the goods and complete the title of the endorse to full possession thereof, the bill of lading until complete delivery of the cargo has been made on shore to some one rightfully claiming under it, remains in force as a symbol, and carries with it not only the full ownership of the goods, but also all rights created by the contract of carriage between the shipper and the shipowner. It is a key which in the hands of a rightful owner is intended to unlock the door of the warehouse, floating or fixed, in which the goods may chance to be.

[53] 'Bill of lading' was defined in the Act I of 1879 [the Indian Stamp Act, 1879 has been repealed by Indian Stamp Act, 1989] as any instrument signed by the owner of a vessel or his agent, acknowledging receipt of the goods described therein and undertaking to deliver the same at a place and to a person mentioned or indicated therein. According to learned counsel for the respondents, omission of definition in the Indian Stamp Act, 1899 intends to give wider meaning to the term as mentioned by K. Krishnamurthi in his treatise on the Indian Stamp Act [6th edition Reprint 1994 on pg. 24].

[54] Therefore, bill of lading entitles the person named therein or his assign/endorsee to the delivery of the goods as mentioned therein. Such person or his assign/endorsee does not require any separate order to claim delivery of goods.

[55] Gujarat Maritime Board [Landing and Wharfage] Regulations, 1986 also envisage [in Regulation 16] delivery of goods by the port authorities only on production of a bill of lading, duly endorsed by the agents inwarding the vessel in customs.

Bill of Entry:

[56] Sec. 2[4] of the Customs Act, 1962 defines bill of entry to mean bill of entry referred to in Sec.46. Sec. 2[16] of the Customs Act defines entry to mean entry in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes in the case of goods imported or to be exported by post, the entry referred to in section 82 or the entry made under the regulations made under section 84.

[57] Chapter VII of the Customs Act relates to clearance of imported goods and export goods . It does not apply to package and postal articles [see.Sc.44]. For clearance of imported goods, restrictions on custody and removal of imported goods are prescribed under section 45, which reads as under:

45. Restrictions on custody and removal of imported goods.

[1] Save as otherwise provided in any law for the time being in force, all imported goods, unloaded in a customs area shall remain in the custody of such person as maybe approved by the Commissioner of Customs until they are cleared for home consumption or are warehoused or are transhipped in accordance with the provisions of Chapter VIII.

[2] The person having custody of any imported goods in a customs area, whether under the provisions of sub-section [1] or under any law for the time being in force,--

[a] shall keep a record of such goods and send a copy thereof to the proper officer;

[b] shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer.

[3] Notwithstanding anything contained in any law for the time being in force, if any imported goods are pilfered after unloading thereof in a customs area while in the custody of a person referred to in sub-section [1], that person shall be liable to

pay duty on such goods at the rate prevailing on the date of delivery of an import manifest or, as the case may be, an import report to the proper officer under section 30 for the arrival of the conveyance in which the said goods were carried.

[58] Entry of goods on importation is mandatory under Sec. 46 which reads as follows:

46. Entry of goods on importation.

[1] The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically to the proper officer a bill of entry for home consumption or warehousing in the prescribed form.

Provided that the Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically, allow an entry to be presented in any other manner:

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

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

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

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

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

[4] The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support

of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.

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

[59] Sec. 47 of the Customs Act relates to clearance of goods for home consumption, which reads as follows:

47. Clearance of goods for home consumption.

[1] Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption.

[2] Where the importer fails to pay the import duty under sub-section[1] within five days, excluding holidays from the date on which the bill of entry is returned to him for payment of duty, he shall pay interest at such rate, not below ten per cent, and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette on such duty till the date of payment of said duty:

Provided that where the bill of entry is returned for payment of duty before the commencement of the Customs [Amendment] Act, 1991 and the importer has not paid such duty before such commencement, the date of return of such bill of entry to him shall be deemed to be the date of such commencement for the purpose of this section:

Provided further that if the Board is satisfied that it is necessary in the public interest so to do, it may, by order for reasons to be recorded, waive the whole or part of any interest payable under this section.

[60] From the aforesaid provisions, it will be evident that the object of declaration is to facilitate the regulatory and revenue functions of the State, which are the twin objects of the Customs Act. The declaration prevents smuggling and importation of dangerous goods etc. and also enables the competent authority to make assessment of duty payable by the importer.

[61] Learned counsel for the respondents highlight1ed the twin objects of the Customs Act, which necessitates a host of documents to be presented by the importer to the Customs authorities in addition to bill of entry such as intimation of arrival of ship, import manifest etc. Though clearance of imported goods from the customs barrier is not possible without various documents, all such documents cannot be termed to be delivery orders though the documents may be required at various steps for clearance of cargo and to obtain clearance of the authority.

[62] 'Bill of entry' filed under Sec. 46 of the Customs Act enables the proper officer to assess duty on the goods declared therein [under Sec. 17 of the Customs Act] as may be in force on the date of bill of entry as provided under Sec. 15 of the Customs Act. It permits clearance of the goods under Sec. 47 of the Customs Act as evident from the relevant provision as quoted above.

[63] Form nos. 22 and 23 of Bill of Entry [Forms] Regulations, 1976 have been produced, which show the details required to be filled in, and the documents required to be submitted with bill of entry. The documents include bill of lading or delivery order at sr. no.5.

[64] Thus, it will be evident that 'bill of entry' is distinct and different from the bill of lading or delivery order, copies of which are to be enclosed with the bill of entry .

[65] Signing of the bill of entry by the proper officer signifying his approval is itself an assessment order, which is appealable.

[66] Bombay High Court, in the case of [Union of India v. Chowgule & Co. P.Ltd.](#), 1985 20 ELT 57, has held that the bill of entry is an innocuous matter and it does not create any obligation or liability on the maker thereof and no civil consequences flow from a mere filing of bill of entry. Upon filing of such bill of entry, the Customs authorities proceed to decide the question about the necessity or otherwise of payment of customs duty and in this fashion, bill of entry merely starts the ball rolling for customs duty.

[67] The aforesaid judgment has been affirmed by the Supreme Court in the case of [Chowgule & Co. Pvt. Ltd. V. Union of India](#), 1987 28 ELT 39, though on different grounds, wherein, the Supreme Court has observed that Sec. 46[1] is a prelude to the levy of duty a first step in that direction.

[68] Rajasthan High Court analyzed the scheme of the Customs Act in the case of [J.K. Industries Ltd. V. Union of India](#), 2005 186 ELT 3, wherein, Division Bench held that the machinery provision for quantification and calculation of duty shall become operative when the bill of entry is presented before the Competent Authority while seeking

permission to remove goods from the bonded warehouse under proper authorization or is otherwise deemed to be improperly removed under section 72.

[69] The Supreme Court, in the case of [Commissioner of Customs v. M. Ambalal & Co.](#), 2010 260 ELT 487, while dealing with the object of the Customs Act, 1962 held as follows:

The Customs Act, 1962 is an Act to consolidate and amend the law relating to Customs. The object of the Act is to regulate the import and export of goods, into and from the shores of India, or otherwise, and determine the customs duty payable. It also attempts to fill the lacunae of the previous customs legislations, viz., the Sea Customs Act and the Land Customs Act. It also aims to counter the difficulties that have emerged over the years due to the changing economic and financial conditions; amongst them it proposes to tackle the increasing problems of smuggling both in and out of the country. The Act aims to sternly and expeditiously deal with smuggled goods, and curb the dents on the revenue thus caused. In order to deal with the menace of smuggling, the authorities are enabled to detect conduct search and seizure, and if necessary, confiscate such smuggled goods, within the territory of India.

[70] In the case of [Union of India v. Atma Fibres](#), 2008 230 ELT 6, the Supreme Court held that it is well settled that filing of the Bill of Entry is required for Customs appraisal.

[71] The Supreme Court in the case of [Escorts Limited v. Union of India](#), 1998 97 ELT 211, has held that when a Bill of Entry is filed by an importer giving the particulars of the goods, the assessing officer signs the Bill of Entry and signifies his approval, that itself is an order of assessment. Similarly, the Bombay High Court has, in the case of [Karan Associates v. Commissioner of Customs](#), 2009 236 ELT 23 held that the assessment on the Bill of Entry is itself an appealable assessment order.

[72] We have noticed Entry 24 of the Stamp Act; bare perusal of which would show that the instrument contemplated there as being a delivery order must be such as would entitle the person therein named or his assigns or the holder thereof, to the delivery of any goods. The words person therein named or his assigns or the holder thereof would show that the instrument contemplated must be such as is negotiable i.e. capable of endorsement/assignment/transfer and which would enable the assignee of the person named therein or the holder of the instrument to take delivery. No person other than the importer named in the Bill of Entry is entitled to seek clearance of the goods from customs and an importer cannot endorse/assign the Bill of Entry and there is no provision under the Customs Act, 1962 which entitles an assignee of an

importer or holder to seek customs clearance based on the Bill of Entry filed by the importer. This would clearly go to show that Bill of Entry is not an instrument contemplated by Entry 24.

[73] Entry 24, as it stood prior to the amendment i.e. up to 31st March, 2006 is as follows

Delivery order in respect of goods, that is to say, any instrument entitling any person therein named or his assigns or the holder thereof, to the delivery of any goods lying in any dock or port, in any warehouse in which goods are stored, or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods upon the sale or transfer of the property therein, [when such goods exceed in value one hundred rupees] .

Post amendment, with effect from 1.4.2006, Entry 24 is as follows:

Delivery order in respect of goods, that is to say, any instrument entitling any person therein named or his assigns or the holder thereof, to the delivery of any goods lying in any dock or port, in any warehouse in which goods are stored, or deposited on rent or hire, or upon any wharf, [when such goods exceed in value one hundred rupees] .

[74] From the aforesaid provisions, it would be evident that from pre-amended Entry 24 of 2006, only change being made is by deletion of the words: such instrument being signed by or on behalf of owner of such goods upon sale or transfer of the property therein which is the present form of Entry 24. Thus, it is not clear as to how the bill of entry will cover Entry 24 after amendment, as an instrument entitling delivery of goods merely on deletion of the words: such instrument being signed by or on behalf of the owner of such goods upon the sale or transfer of the property therein .

[75] In the present case, we are not concerned with the actual position of one or the other respondent-private writ petitioner. It has not been discussed by the learned Single Judge whether document produced by one or the other respondent-writ petitioner enabled the holder to delivery of goods lying in dock or port or in any warehouse in which the goods are stored, is a question to be determined by the authorities. We are only supposed to decide whether stamp duty is leviable on the bill of entry submitted by an importer and whether bill of entry for that purpose can be said to be a deliver order in respect of goods i.e. an instrument entitling any person to the delivery of any goods.

[76] The object of the Customs Act is to facilitate regulatory and revenue functions of the State which are the twin objects of the Customs Act. Sec. 46[1] of the Customs Act

is a prelude to the levy of duty a first step in that direction as held by the Supreme Court in the case of [Union of India v. Chowgule & Co. P.Ltd.](#), 1985 20 ELT 57. The object of the Act is to regulate the import and export of goods, into and from the shores of India, or otherwise, and determine the customs duty payable. It also attempts to fill the lacunae of the previous customs legislations, viz., the Sea Customs Act and the Land Customs Act. It also aims to counter the difficulties that have emerged over the years due to the changing economic and financial conditions; amongst them it proposes to tackle the increasing problems of smuggling both in and out of the country. The Act aims to sternly and expeditiously deal with smuggled goods, and curb the dents on the revenue thus caused. In order to deal with the menace of smuggling, the authorities are enabled to detect conduct search and seizure, and if necessary, confiscate such smuggled goods, within the territory of India. Such is the finding of the Supreme Court in the case of [Commissioner of Customs v. M. Ambalal & Co.](#), 2010 260 ELT 487. The bill of entry signifying itself is an order of assessment has also been held by the Supreme Court in the case of [Escorts Limited v. Union of India](#), 1998 97 ELT 211 and thus, it can be held that it is not an order of delivery, therefore, it cannot be held that bill of entry is an instrument entitling a person named therein or assigns or holder thereof to get delivery of any goods lying in any dock or port or in any warehouse. It is one of the documents, which is required to be produced before the Customs authorities for clearance of goods for home consumption under Sec. 47 of the Customs Act. For the purpose of clearance, entry of goods of importation is required under Sec. 46 enabling the importer of goods to present to the proper officer a bill of entry for home consumption or warehousing. But it does not automatically become delivery order as distinct and different from the clearance of the goods.

[77] We hereby hold that by presentation of 'bill of entry' merely on clearance of goods is given for home consumption or for warehousing, and is distinct and different from that of delivery of goods.

[78] The function of the State requires creation or generation of documents such as [i] Intimation of arrival of ship issued/signed by Customs House Agent of the importer; [ii] Import General Manifest signed by the person in charge of the vessel declaring, inter alia, cargo and goods carried by the vessel; [iii] 'Bill of entry' signed by the importer/consignee declaring particulars in respect of goods, namely, the quantity, numbers of packages, value, vessel's name, country of origin relevant heading of the Customs Tariff under which the goods are classifiable etc. and [iv] 'Bill of lading' or delivery order etc. But all of such documents will not be an instrument of delivery order for the purpose of Entry 24. The question whether 'bill of lading' is delivery order which is mentioned in one of the documents to be produced along with 'bill of entry' is not

required to be answered in the present case, as admittedly, stamp duty is not charged on 'bill of lading' in view of exclusion under Sec. 2[1] of the Bombay Stamp Act. However, one cannot ignore the document to be produced along with the 'bill of entry' [Form Nos. 22 and 23 of Bill of Entry [Forms] Regulations, 1976], where under at sr. no. 5, it has been mentioned: 'bill of lading' or 'delivery order' to be enclosed.

[79] We therefore, hold that on 'bill of entry, the authorities cannot charge stamp duty under Art. 24.

[80] So far as the judgment passed by the learned Single Judge is concerned, except some observations made in paras 10.1, 13.4 and 14, rest portion does not require any interference or clarification.

[81] At para 10.1 of the judgment, the learned Single Judge has held that:

... a delivery order is a document which contains an instruction by the bailor to the bailee to deliver the goods bailed to the person named in the delivery order or the holder thereof. In this case, there must be bailment of goods, the document must be issued by the bailor and the document must contain instructions to the bailee. In the case of bill of lading, it is not a delivery order. ...

[82] The aforesaid finding is not based on the proper appreciation of law nor is based on the facts of the case.

[83] It is not necessary that in all cases, delivery order requires instructions by the bailor to the bailee to deliver the goods bailed to the person named in the delivery order. A 'bill of lading' is also an order relating to delivery of goods, which will be evident from Regulation 16 of the Gujarat Maritime Board [Landing and Wharfage] Regulations, 1956.

[84] The Supreme Court, in the case of [J.V.Gokal & Co. \[Private\] Ltd. V. Asst. Collector of Sales Tax](#), 1960 AIR(SC) 595 has held that 'bill of lading is a writing signed on behalf of the owner of the ship in which goods are embarked acknowledging the receipt of the goods and undertaking to deliver them at the end of the voyage subject to such conditions as may be mentioned in the bill of lading. Therefore, it will be clear that 'bill of lading' is a delivery order. Finding of the learned Single Judge that 'bill of lading' is not a delivery order being erroneous, we hereby set aside such finding at para-10.1 of the judgment.

[85] At paras 13.4 and 14 of the impugned judgment, the learned Single Judge held that if the goods are transferred to a third person and the names in the 'bill of lading' and 'bill of entry' are different, the Circular relating to stamp duty is applicable and

stamp duty is leviable on bill of entry. We hold that such finding is erroneous as 'bill of entry' is not an instrument relating to transfer of any goods and we have hold that such 'bill of entry' cannot be termed to be an order of delivery in absence of 'bill of lading' or order of delivery; the finding at paras 13.4 and 14 of the judgment to that extent being erroneous we set aside such portion of the judgment passed by the learned Single Judge.

[86] Rest of the part of the judgment passed by the learned Single Judge, otherwise, having been based on correct appreciation of law requires no interference. However, we make it clear that the order passed by learned Single Judge or this order shall not stand in the way of the competent authority to pass any order in accordance with law in case of any infirmity in the 'bill of entry'.

[87] We find no merits in the appeals, but in view of our finding the judgment passed by the learned Single Judge stands modified to the aforesaid extent. The appeals are accordingly disposed of. There shall be no order as to costs.

[88] Consequently, Civil Applications stand disposed of.

