REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2525 OF 2018

THE CHAIRMAN, BOARD OF TRUSTEES,
COCHIN PORT TRUST …APPELLANT

VERSUS

M/S AREBEE STAR MARITIME AGENCIES
PVT. LTD. & ORS. …RESPONDENTS

WITH

CIVIL APPEAL NO. 2526 OF 2018
CIVIL APPEAL NO. 2527 OF 2018
CIVIL APPEAL NO. 2528 OF 2018
CIVIL APPEAL NO. 2529 OF 2018
CIVIL APPEAL NO. 2530 OF 2018
CIVIL APPEAL NO. 2531 OF 2018
CIVIL APPEAL NO. 2532 OF 2018
CIVIL APPEAL NO. 2533 OF 2018
CIVIL APPEAL NO. 2534 OF 2018
CIVIL APPEAL NO. 2535 OF 2018

J U D G M E N T

R.F. Nariman, J.

1. This batch of appeals arises out of a reference order made by a Division Bench of this Court dated 07.03.2018 reported as (2018) 4

SCC 592. The learned Division Bench stated as to how these proceedings arose before it as follows:

> "**1.** These proceedings have arisen from a judgment dated 27-9-2011 [*Arebee Star Maritime Agencies (P) Ltd.* v. *Cochin Port Trust*, Original Petition No. 21041 of 1999, decided on 27-9-2011 (Ker)] of a Division Bench of the Kerala High Court in a batch of writ appeals and original petitions, preferred by various shipping agents.
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> **2.** The question before the High Court was whether the liability to pay "ground rent" on containers unloaded at Cochin Port, but not cleared by the consignees/importers and refused to be destuffed by the Port, on the ground of inadequate storage space, can be imposed on the owners of the vessel/steamer agents beyond the period of 75 days, fixed by the Tariff Authority of Major Ports [TAMP], a statutory body constituted under Section 47-A of the Major Port Trusts Act [MPT Act], 1963.
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> **3.** The facts of the case are summarised in the following extract of the judgment of the High Court:
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> "The sequence of events that led to the stalemate refers to the incidents which happened in 1998 when there (sic) imports synthetic woollen rags (in containers) in the Cochin Port Trust premises. The said containers were destuffed to facilitate Customs examination and to return the empty containers to the steamer agents. The destuffed cargo occupied much larger space and was not promptly cleared by the consignees in view of the hurdles placed by the Customs stating that the cargo actually did not constitute old woollen rags as declared, but mostly were brand new clothes which could not have been cleared. The "modus operandi" of the consignees/importers attracted wide attention of all concerned and taking note of the probable extent of liability to be imposed by the Customs Department, and the liability to be satisfied to the Port and others concerned, the consignees did not turn up to clear the goods and they were lying idle in the Port premises for quite long."

> The Port Trust charged "ground rent" from the steamer agents/owners of the containers."

2. After then setting out the relevant provisions of the Major Port Trusts Act, 1963 ["**MPT Act**"] and the relevant portions of five decisions of this Court, namely, **Port of Madras v. K.P.V. Sheik Mohamed Rowther & Co.** 1963 Supp. (2) SCR 915 ["**Rowther-I**"]; **Port of Madras v. K.P.V. Sheik Mohd. Rowther & Co. P. Ltd.** (1997) 10 SCC 285 ["**Rowther-II**"]; **Port of Bombay v. Sriyanesh Knitters** (1999) 7 SCC 228; **Forbes Forbes Campbell & Co. v. Port of Bombay** (2015) 1 SCC 228 ["**Forbes-II**"] and **Rasiklal Kantilal & Co. v. Port of Bombay** (2017) 11 SCC 1, the Division Bench then stated:

> "**23.** Analysing the above judgments, the following position emerges:
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> **23.1.** The decisions in *Rowther-I*, *Rowther-II*, *Sriyanesh Knitters*, *Forbes-II* and *Rasiklal* do not seem to follow a consistent line about whom the Port Trust has to fasten the liability for payment of its charges;
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> **23.2.** The Constitution Bench judgment in *Rowther-I* holds that when Port Trust takes charge of the goods from the shipowner, the shipowner is the bailor and the Port Trust is the bailee. While the Bench of two Judges in *Sriyanesh Knitters* holds that there comes into existence the relationship of bailor and bailee between the consignee and the Port Trust, the decision in *Forbes-II* disagrees with this view of *Sriyanesh Knitters*. *Rasiklal* opines that enquiry into such relationship is irrelevant in determining the right of a Port Trust to recover its dues;
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> **23.3.** While the decision in *Sriyanesh Knitters* was based on the interpretation of the term "owner" under Section 2(*o*) of the MPT Act, the judgments in *Forbes-II* and *Rasiklal* do not

find the question of interpretation of the term “owner” to be relevant;

23.4. While *Forbes-II* relies upon the Constitution Bench decision in *Rowther-I* to come to its conclusions, *Rasiklal* does not find *Rowther-I* to be an authority for the proposition that until the title in goods is passed to the consignee, the liability to pay various charges payable to a Port Trust, for its services in respect of goods, falls exclusively on the steamer agent;

23.5. In *Rowther-II*, it was held that once the goods are handed over to the Port Trust by the steamer and the steamer agents have duly endorsed the bill of lading or issued the delivery order, their obligation to deliver the goods personally to the owner or the endorsee comes to an end. The decision in *Rasiklal*, which has been delivered after the reference of *Forbes-I* was disposed of, takes a contrary view that in cases where the consignee does not come to take delivery of goods, the position of law laid down by *Rowther-II* would result in a situation that the Port Trust would incur expenses without any legal right to recover such amount from the consignor, with whom there was no contractual obligation; and

23.6. The Bench of two Judges in *Rasiklal* opined that it agrees with the conclusions recorded in *Rowther-II* and *Forbes-II* that a Port Trust could recover the rates due, either from the steamer agent or the consignee. However, the holding in *Rowther-II* finds only the consignee to be liable.

24. Taking note of the above inconsistencies in the judgments which have been delivered after the pronouncement by the Constitution Bench in *Rowther-I*, we are inclined to the view that the following issues need to be resolved by a larger Bench:

24.1. Whether in the interpretation of the provision of Section 2(*o*) of the MPT Act, the question of title of goods, and the point of time at which title passes to the consignee is relevant to determine the liability of the consignee or

steamer agent in respect of charges to be paid to the Port Trust;

24.2. Whether a consignor or a steamer agent is absolved of the responsibility to pay charges due to a Port Trust, for its services in respect of goods which are not cleared by the consignee, once the bill of lading is endorsed or the delivery order is issued;

24.3. Whether a steamer agent can be made liable for payment of storage charges/demurrage, etc. in respect of goods which are not cleared by the consignee, where the steamer agent has not issued a delivery order; if so, to what extent;

24.4. What are the principles which determine whether a Port Trust is entitled to recover its dues, from the steamer agent or the consignee; and

24.5. While the Port Trust does have certain statutory obligations with regard to the goods entrusted to it, whether there is any obligation, either statutory or contractual, that obliges the Port Trust to destuff every container that is entrusted to it and return the empty containers to the shipping agent.

25. The larger Bench may deal with any additional issues relevant to the context, as it deems necessary."

3. The impugned judgment dated 27.09.2011 of a Division Bench of the Kerala High Court decided a limited question that was argued before it, namely:

> "Whether liability to pay 'Ground Rent' in respect of the containers unloaded in the Cochin Port, lying uncleared by the Consignees/Importers and refused to be destuffed by the port, for inadequate storage space, can be mulcted on the owners of the Vessel/Steamer Agents beyond 75 days, in view of the Scheme of the Statute (Major Port Trusts Act 1963 – in short 'MPT Act') and the contents of the TAMP

(Tariff Authority for Major Ports) Orders dated 10.11.1999, 19.07.2000, and 13.09.2005, is the point."

4. The impugned judgment came to be passed as a number of writ appeals had been preferred by shipping agents, the Port Trust, and one consignee against the judgment dated 16.09.2002 of a single Judge of the Kerala High Court. A writ petition, namely, W.P. (C) No. 32191 of 2004, was also disposed of by the impugned judgment, as it raised a similar question of law. The facts involved in these appeals and writ petition were briefly stated in paragraphs 4 and 5 of the impugned High Court judgment as follows:

> "**4.** Goods involved in all the cases, imported as 'FCL' (Full Container Loads) mainly consist of 'synthetic woollen rags', except in W.P. (C) No. 32191 of 2004, where it is VCD players. The period of import is during August 1998 to March 1999. All the Containers now stand returned after destuffing, pursuant to common judgment in the Original Petitions and the interim orders passed in the Appeals.
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> **5.** Some of the goods imported earlier in the Cochin Port, titled as "woollen rags" were actually found to be "brand new clothes" on inspection by the Customs Department, which attracted heavy duty, penalty and such other charges. The dispute between the Consignees and the Customs went on
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> for an indefinite period and in the said circumstances, the consignees did not turn up to clear the goods in respect of the subsequent transactions as well, presumably knowing the probable outcome and the huge liability to be satisfied under different heads including the Port charges and other dues because of the delay. So also, no action was taken by the Port Trust to destuff the goods and they retained the containers for their own reasons."

5. The learned Senior Advocate who led the arguments on behalf of the shipping agents before the High Court made one important concession, namely, that the shipping agents do not propose to press the contention as to their liability in satisfying ground rent, except that they ought not to be mulcted with any such liability beyond the period of 75 days, which was set out in the relevant Tariff Authority for Major Ports ("**TAMP**") Orders. At the point of time that the Division Bench delivered its judgment, a Division Bench of this Hon'ble Court in **Forbes Forbes Campbell & Co. Ltd. v Board of Trustees, Port of Bombay** (2008) 4 SCC 87 ["**Forbes-I**"], had referred the following three questions to a larger Bench:

> "**9.** The questions of law of public importance in this appeal are as follows:
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> *1*. Whether a steamer agent can be construed as owner of the goods carried in his principal's vessel within the definition of "owner" in relation to goods under Section 2(*o*) of the Major Port Trusts Act, 1963?
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> *2*. Whether a steamer agent at all can be made liable for payment of storage charges/demurrage, which are uncleared by the consignee, even where steamer agent has not issued delivery order?
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> *3*. In the event a steamer agent is held liable, to what extent he is liable and whether it absolves the respondent from acting promptly under Sections 61 or 62 of the Act?

6. Since this reference had not yet been answered by the larger Bench at the time the impugned proceedings were ongoing, the learned

Senior Advocate representing the shipping agents before the High Court clarified that the High Court may go on to decide only the question as to the *extent* of liability of the shipping agents, i.e. whether liability could extend beyond the 75 days mentioned in the relevant TAMP Orders.

7. In answering the question raised before it, the impugned judgment referred to the fact that the shipping agents repeatedly requested the Port Trust to destuff the containers which were lying at the port, but that the Port Trust stated that they cannot do so for inadequacy of space. The impugned judgment therefore held that because of the lapse on the part of the consignee on the one hand in not lifting the goods, and the Port Trust on the other in not destuffing containers, the shipping agents were caught in between, and were being made "to pay through their nose". This being the case, the impugned judgment went on to construe sections 61 and 62 of the MPT Act, by which a Board "may", after the expiry of two months from the time when any goods passed into its custody, sell such goods under certain circumstances. The impugned judgment went on to hold that the expression "may" in the said provisions must be read as "shall", as a duty is cast on the Port Trust to get rid of the goods as soon as possible in a fact situation

where the consignee does not lift such goods. Ultimately, the impugned judgment concluded:

> "**44.** In the above facts and circumstances, this Court finds that, there is no rationale on the part of the Port Trust in contending that they are entitled to collect 'Ground Rent' charges in respect of containers indefinitely. The course pursued by them without causing the goods to be destuffed, despite the specific request, on the failure of the Consignee/Importer to have it cleared and by proceeding against such goods for causing the same to be sold in the public auction, realising the funds, to be apportioned in the manner specified under Section 63, cannot but be deprecated. This Court holds that the respondent Port Trust can demand 'Ground Rent' only to a maximum period of '75 days' as specified by the Tariff Authority for Major Ports as per the relevant TAMP Orders discussed above."

8. Shri Ritin Rai, learned Senior Advocate appearing on behalf of the Appellant Port Trust, referred to various provisions of the Customs Act, 1962 and the MPT Act, and argued that once responsibility for the goods is taken over by the Port Trust, the Port Trust becomes a bailee of the goods delivered to it by the ship-owner, who in turn is relieved of its liability for loss or damage to the goods during the period when the goods are in the custody of the Port Trust. Thus, the Port Trust is entitled to recover, from the shipping agents, demurrage and other dues for the period until a delivery order is issued by the shipping agent to the consignee, and for this purpose is entitled to exercise a lien over the goods for realisation of such demurrage. He added that where a delivery order is withheld or withdrawn, disabling the consignee from

getting delivery of the goods, the position remains as if no delivery order was issued at all. In such a case, the liability for payment of demurrage and other dues of the Port Trust will continue to be with the shipping agent. According to the learned Senior Advocate, the different strands of the judgments of this Court can all be reconciled to reach the conclusion canvassed for by the learned Senior Advocate. He argued that the submission that upon landing and discharge of the goods from the vessel, the Port Trust becomes a sub-bailee of the shippers/consignors, and that the Port Trust can therefore recover its dues *only* from the consignors, or the consignee who steps into the consignor's shoes upon endorsement of the bill of lading pursuant to section 1 of the Indian Bills of Lading Act, 1856, is wholly incorrect. He dealt with the decision of the Privy Council in "**The K.H. Enterprise**" [1994] 1 Lloyd's Law Reports 593, and distinguished the said decision from the present case, stating that the decision nowhere relates to the obligations of the bailee to the sub-bailee for services undertaken by it at the bailee's request. He went on to argue that in any case, the sub-bailee in **K.H. Enterprise** (supra) was entitled to payment for its services from the bailee pursuant to the agreement between them, and not from the bailor/shipper. Analogously, therefore, the Port Trust (sub-bailee) would be entitled to payment for its services from the shipping

agent (bailee). He was at pains to argue that the passing of title to the goods is immaterial when it comes to the Port Trust collecting its dues, as the Port Trust has no means of ascertaining when such title has passed. In any event, Shri Rai contended that the correct reading of the MPT Act leads to the conclusion that the passing of title is in any case wholly irrelevant. He stressed the fact that containers belonging to the shipping agents are required to be returned to them upon destuffing, as a result of which they are liable for ground rent. He strongly supported the decision in **Rasiklal** (supra) which laid this proposition down as a matter of law. He also strongly deprecated the impugned judgment of the Kerala High Court, stating that the discretion that has been given under sections 61 and 62 of the MPT Act to the Port Trust cannot be converted into a mandatory obligation, and that "may" must be read as "may", and not "shall".

9. Shri Prashant S. Pratap, learned Senior Advocate appearing on behalf of Respondent No.1, a shipping/steamer agent, was at pains to point out that endorsement on the bill of lading by the shipping agent, and a delivery order being given by the shipping agent, does not pass title to the goods. The endorsement on the bill of lading by the consignor in favour of a notified party or a consignee, when read with section 1 of the Indian Bills of Lading Act, 1856, is the endorsement that passes

title to goods, and must not be confused with his client's endorsement on the bill of lading. He relied heavily on the Privy Council judgment in **K.H. Enterprise** (supra), stating that the decision applied on all fours to the present case, and that therefore the Port Trust as a sub-bailee of the goods steps into the shoes of the bailee, i.e. the ship-owner/ship-owner's agent, and must therefore sue the bailor i.e. the consignor/shipper, and not the original bailee. This was also because implied consent has been given by the consignor to handover the goods to the Port Trust at the port of despatch for delivery to the consignee, the Port Trust being fully aware that the goods are not the property of the carrier, namely the vessel, who is the bailee. He argued that on a conjoint reading of the provisions of the MPT Act, and on a reading of section 158 of the Indian Contract Act, 1872, the bailor must repay to the bailee "necessary expenses" incurred by it for the purposes of the bailment. This would, therefore, enable the Port Trust to recover storage charges from the bailor who is always the owner of the goods, whether consignor or consignee, but never from the ship-owner, who is never the bailor. Shri Pratap argued that the MPT Act itself makes a clear distinction between the steamer agent, who is the agent of the vessel, and other agents, namely those of the consignor/consignee, under section 62 of the MPT Act. Further, upon

sale of goods under section 63, the excess must be returned only to the owner. Such excess can never be paid to the ship-owner or the steamer's agent. He further went on to argue that a clear distinction is made in section 2(o) of the MPT Act between "owner" in relation to the goods, and "owner" in relation to the vessel, and that the steamer agent – who is the agent of the vessel – can never be said to be the "owner" of goods. He relied strongly on the judgment in **Sriyanesh Knitters** (supra), stating that the Port Trust is a bailee on behalf of the consignee who is the bailor, on a consideration of section 1 of the Indian Bills of Lading Act, 1856, and submitted that **Forbes-II** (supra) is wholly incorrect and deserves to be overruled. He dealt with the judgment in **Rowther-I** (supra) in great detail, and distinguished it from the present case, stating that the judgment does not concern demurrage or storage charges *post* landing of the goods, and after the Port Trust takes custody of the goods and issues the receipt, and is thus not applicable to the facts of the present case. Further, according to him, **Rasiklal** (supra), insofar as it agrees with **Forbes-II** (supra) is incorrect. Insofar as **Rasiklal** (supra) notes the legal position that the Port Trust is a sub-bailee of the goods bailed by the consignor (bailor) to the ship-owner (bailee), it is absolutely correct and must be followed. So far as **Rowther-II** (supra) is concerned, the learned Senior

Advocate stated that the portion of **Rowther-II** (supra), which mixes up endorsement by the steamer agent with the endorsement by the consignor, cannot be said to be good law. He also contended that the issuance of a delivery order to the consignee is irrelevant, and has no bearing on the liability to pay storage charges. He further argued that to the extent that the judgment states that the vessel and its agent cannot be mulcted with the charges, the judgment is absolutely correct and must be followed. Insofar as goods carried by containers is concerned, Shri Pratap contends that the Port Trust itself states that the charges claimed by the Port Trust are in respect of goods, and not in respect of the container in which the goods are stuffed. Thus, the container cannot be said to be “goods” as defined which would incur storage charges. He also relied upon the counter affidavit filed by the Port Trust before the High Court, in which the Port Trust admitted that if the goods were imported as bulk cargo, the liability to satisfy demurrage would not be on the steamer agent but on the consignee. The mere fact that they are carried in a container can therefore make no difference. He argued that since all questions were now open before this Court, he was not constrained by the predecessor counsel (including himself) in the High Court, stating that as a reference was then pending to a larger Bench of this Court, they did not argue the

larger question as to whether the steamer agent is at all liable. There is no estoppel in any case in law, and the correct position has to be determined by this Court.

10. Shri Rahul Narichania, learned Senior Advocate appearing on behalf of Respondent No.6 (The Container Shipping Lines Association), who is an Intervenor in these proceedings, argued that the definition of "owner" in section 2(o) of the MPT Act differentiates between owner of the "vessel", and owner of the "goods", and that a steamer agent does not come within the first part of section 2(o) if the doctrine of *noscitur a sociis* is applied. He argued that a steamer agent is an agent of a disclosed principal, i.e. the ship-owner, and therefore cannot be made liable for demurrage charges. It is only an agent for loading and unloading of cargo, i.e. an agent of the consignor or consignee who can be made so liable. He went on to argue that a steamer agent must be distinguished from a stevedoring agent, and is not involved in loading and unloading cargo. He referred to various provisions of the MPT Act, and argued that section 48(1)(d) therein does not contemplate any liability on a steamer agent. This section has to be contrasted with section 49(1)(c), which expressly contemplates liability on a steamer agent, but only with respect to land that is taken on lease from the Port Trust by the steamer agent. He relied heavily upon

sections 61 to 63 of the MPT Act to argue that when the goods are sold by the public auction, a steamer agent has to be notified only because the vessel owner may have a lien on such goods, which can be enforced in its favour under section 60 of the MPT Act. Further, he argued that it is made clear that if there is a surplus from the sale proceeds, such surplus shall be paid only to the importer, owner or consignee of the goods or their agent, from which list of persons the ship-owner and its agent are conspicuously absent, making it clear that it is the owner of the goods alone, or persons entitled to the goods, that the Port Trust must chase for demurrage charges incurred after landing. He then argued that the passing of title under section 1 of the Indian Bills of Lading Act, 1856 makes it clear that it is either the consignor (before title passes) or the consignee (after title passes) that can alone be made liable for payment of such charges. He also argued that the obligation to clear goods imported which have been stored in a warehouse are that of the importer, and for this he relied heavily on section 49 of the Customs Act, 1962. He argued that this would also make it clear that the steamer agent therefore does not come into the picture. He further argued that the steamer agent has no bailor-bailee relationship with the Port Trust, and joined Shri Pratap in relying upon **Sriyanesh Knitters** (supra) and overruling of **Forbes-II** (supra). To the

extent that **Rasiklal** (supra) has made observations against steamer agents, it is incorrect in law and should be overruled to this extent.

11. Shri Kavin Gulati, learned Senior Advocate appearing on behalf of Hapag-Lloyd India Pvt. Ltd., a shipping agent and also an Intervenor in these proceedings, reiterated the submissions made by the predecessor counsel, and further stressed on sections 29, 30, 33, 45, 48 and 150 of the Customs Act. He also argued that once goods have been landed, a ship-owner's agent can never be made liable for demurrage charges, which should be to the account of the owner or the beneficial owner of the goods.

12. Having heard the learned Senior Counsel on behalf of all parties, it is necessary to first set out the relevant provisions of the MPT Act.

> "**Section 2. Definitions.-**In this Act, unless the context otherwise requires,-
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> (f) "dock" includes all basins, locks, cuts, entrances, graving docks, graving blocks, inclined planes, slipways, gridirons, moorings, transit-sheds, warehouses, tramways, railways and other works and things appertaining to any dock, and also the portion of the sea enclosed or protected by the arms or groynes of a harbour;
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> *xxx xxx xxx*
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> (h) "goods" includes livestock and every kind of movable property;
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> *xxx xxx xxx*
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> (n) "master", in relation to any vessel or any aircraft making use of any port, means any person having for the time being

the charge or control of such vessel or such aircraft, as the case may be, except a pilot, harbour master, assistant harbour master, dock master or berthing master of the port;

(o) “owner”,

(i) in relation to goods, includes any consignor, consignee, shipper or agent for the sale, custody, loading or unloading of such goods; and

(ii) in relation to any vessel or any aircraft making use of any port, includes any part-owner, charterer, consignee, or mortgagee in possession thereof;

xxx xxx xxx

(v) “rate” includes any toll, due, rent, rate, fee, or charge leviable under this Act;

xxx xxx xxx

(z) “vessel” includes anything made for the conveyance, mainly by water, of human beings or of goods and a caisson;”

“**42. Performance of services by Board or other person.—**(1) A Board shall have power to undertake the following services:—

(a) landing, shipping or transhipping passengers and goods between vessels in the port and the wharves, piers, quays or docks belonging to or in the possession of the Board;

(b) receiving, removing, shifting, transporting, storing or delivering goods brought within the Board’s premises;

(c) carrying passengers by rail or by other means within the limits of the port or port approaches, subject to such restrictions and conditions as the Central Government may think fit to impose;

(d) receiving and delivering, transporting and booking and despatching goods originating in the vessels in the port and intended for carriage by the neighbouring railways, or *vice*

versa, as a railway administration under the Indian Railways Act, 1890 (9 of 1890);

(e) piloting, hauling, mooring, remooring, hooking, or measuring of vessels or any other service in respect of vessels; and

(f) developing and providing, subject to the previous approval of the Central Government, infrastructure facilities for ports.

(2) A Board may, if so requested by the owner, take charge of the goods for the purpose of performing the service or services and shall give a receipt in such form as the Board may specify.

(3) Notwithstanding anything contained in this section, the Board may, with the previous sanction of the Central Government, authorise any person to perform any of the services mentioned in sub-section (1) on such terms and conditions as may be agreed upon.

(3A) Without prejudice to the provisions of sub-section (3), a Board may, with the previous approval of the Central Government, enter into any agreement or other arrangement (whether by way of partnership, joint venture or in any other manner) with, any body corporate or any other person to perform any of the services and functions assigned to the Board under this Act on such terms and conditions as may be agreed upon.

(4) No person authorised under sub-section (3) shall charge or recover for such service any sum in excess of the amount specified by the Authority, by notification in the Official Gazette.

(5) Any such person shall, if so required by the owner, perform in respect of goods any of the said services and for that purpose take charge of the goods and give a receipt in such form as the Board may specify.

(6) The responsibility of any such person for the loss, destruction or deterioration of goods of which he has taken charge shall, subject to the other provisions of this Act, be

that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872 (9 of 1872).

(7) After any goods have been taken charge of and a receipt given for them under this section, no liability for any loss or damage which may occur to them shall attach to any person to whom a receipt has been given or to the master or owner of the vessel from which the goods have been landed or transhipped.

43. Responsibility of Board for loss, etc., of goods.—(1) Subject to the provisions of this Act, the responsibility of any Board for the loss, destruction or deterioration of goods of which it has taken charge shall,—

(i) in the case of goods received for carriage by railway, be governed by the provisions of the Indian Railways Act, 1890 (9 of 1890); and

(ii) in other cases, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872 (9 of 1872), omitting the words "in the absence of any special contract" in section 152 of that Act:

Provided that no responsibility under this section shall attach to the Board—

(a) until a receipt mentioned in sub-section (2) of section 42 is given by the Board; and

(b) after the expiry of such period as may be prescribed by regulations from the date of taking charge of such goods by the Board.

(2) A Board shall not be in any way responsible for the loss, destruction or deterioration of, or damage to, goods of which it has taken charge, unless notice of such loss or damage has been given within such period as may be prescribed by regulations made in this behalf from the date of taking charge of such goods by the Board under sub-section (2) of section 42."

"**48. Scales of rates for services performed by Board or other person.—**(1) The Authority shall from time to time, by

notification in the Official Gazette, frame a scale of rates at which, and a statement of conditions under which, any of the services specified hereunder shall be performed by a Board or any other person authorised under section 42 at or in relation to the port or port approaches—

(a) transhipping of passengers or goods between vessels in the port or port approaches;

(b) landing and shipping of passengers or goods from or to such vessels to or from any wharf, quay, jetty, pier, dock, berth, mooring, stage or erection, land or building in the possession or occupation of the Board or at any place within the limits of the port or port approaches;

(c) cranage or porterage of goods on any such place;

(d) wharfage, storage or demurrage of goods on any such place;

(e) any other service in respect of vessels, passengers or goods.

(2) Different scales and conditions may be framed for different classes of goods and vessels."

"**59. Board's lien for rates.—**(1) For the amount of all rates leviable under this Act in respect of any goods, and for the rent due to the Board for any buildings, plinths, stacking areas, or other premises on or in which any goods may have been placed, the Board shall have a lien on such goods, and may seize and detain the same until such rates and rents are fully paid.

(2) Such lien shall have priority over all other liens and claims, except for general average and for the ship-owner's lien upon the said goods for freight and other charges where such lien exists and has been preserved in the manner provided in sub-section (1) of section 60, and for money payable to the Central Government under any law for the time being in force relating to customs, other than by way of penalty or fine.

60. Ship-owner's lien for freight and other charges.—(1) If the master or owner of any vessel or his agent, at or before the time of landing from such vessel any goods at any dock, wharf, quay, stage, jetty, berth, mooring or pier belonging to or in the occupation of a Board, gives to the Board a notice in writing that such goods are to remain subject to a lien for freight or other charges payable to the ship-owner, to an amount to be mentioned in such notice, such goods shall continue to be liable to such lien to such amount.

(2) The goods shall be retained in the custody of the Board at the risk and expense of the owners of the goods until such lien is discharged as hereinafter mentioned; and godown or storage rent shall be payable by the party entitled to such goods for the time during which they may be so retained.

(3) Upon the production before any officer appointed by the Board in that behalf of a document purporting to be a receipt for, or release from, the amount of such lien, executed by the person by whom or on whose behalf such notice has been given, the Board may permit such goods to be removed without regard to such lien, provided that the Board shall have used reasonable care in respect to the authenticity of such document.

61. Sale of goods after two months if rates or rent are not paid or lien for freight is not discharged.—(1) A Board may, after the expiry of two months from the time when any goods have passed into its custody, or in the case of animals and perishable or hazardous goods after the expiry of such shorter period not being less than twenty-four hours after the landing of the animals or goods as the Board may think fit, sell by public auction or in such cases as the Board considers it necessary so to do, for reasons to be recorded in writing, sell by tender, private agreement or in any other manner such goods or so much thereof as, in the opinion of the Board, may be necessary—

(a) if any rates payable to the Board in respect of such goods have not been paid, or

(b) if any rent payable to the Board in respect of any place on or in which such goods have been stored has not been paid, or

(c) if any lien of any ship-owner for freight or other charge of which notice has been given has not been discharged and if the person claiming such lien for freight or other Charges has made to the Board an application for such sale.

(2) Before making such sale, the Board shall give ten days' notice of the same by publication thereof in the Port Gazette, or where there is no Port Gazette, in the Official Gazette and also in at least one of the principal local daily newspapers:

Provided that in the case of animals and perishable or hazardous goods, the Board may give such shorter notice and in such manner as, in the opinion of the Board, the urgency of the case admits of.

(3) If the address of the owner of the goods has been stated on the manifest of the goods or in any of the documents which have come into the hands of the Board, or is otherwise known notice shall also be given to him by letter delivered at such address, or sent by post, but the title of a *bona fide* purchaser of such goods shall not be invalidated by a reason of the omission to send such notice, nor shall any such purchaser be bound to inquire whether such notice has been sent.

(4) Notwithstanding anything contained in this section, arms and ammunition and controlled goods may be sold at such time and in such manner as the Central Government may direct.

Explanation.—In this section and section 62—

(a) "arms and ammunition" have the meanings respectively assigned to them in the Arms Act, 1959 (54 of 1959);

(b) "controlled goods" means goods the price or disposal of which is regulated under any law for the time being in force.

62. Disposal of goods not removed from premises of Board within time limit.—(1) Notwithstanding anything

contained in this Act, where any goods placed in the custody of the Board upon the landing thereof are not removed by the owner or other person entitled thereto from the premises of the Board within one month from the date on which such goods were placed in their custody, the Board may, if the address of such owner or person is known, cause a notice to be served upon him by letter delivered at such address or sent by post, or if the notice cannot be so served upon him or his address is not known, cause a notice to be published in the Port Gazette or where there is no Port Gazette, in the Official Gazette and also in at least one of the principal local daily newspapers, requiring him to remove the goods forthwith and stating that in default of compliance therewith the goods are liable to be sold by public auction or by tender, private agreement or in any other manner:

Provided that where all the rates and charges payable under this Act in respect of any such goods have been paid, no notice of removal shall be so served or published under this sub-section unless two months have expired from the date on which the goods were placed in the custody of the Board.

(2) The notice referred to in sub-section (1) may also be served on the agents of the vessel by which such goods were landed.

(3) If such owner or person does not comply with the requisition in the notice served upon him or published under sub-section (1), the Board may, at any time after the expiration of two months from the date on which such goods were placed in its custody, sell the goods by public auction or in such cases as the Board considers it necessary so to do, for reason to be recorded in writing sell by tender, private agreement or in any other manner after giving notice of the sale in the manner specified in sub-sections (2) and (3) of section 61.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (3)—

(a) the Board may, in the case of animals and perishable or hazardous goods, give notice of removal of such goods although the period of one month or, as the case may be, of

two months specified in sub-section (1) has not expired or give such shorter notice of sale and in such manner as, in the opinion of the Board, the urgency of the case requires;

(b) arms and ammunition and controlled goods may be sold in accordance with the provisions of sub-section (4) of section 61.

(5) The Central Government may, if it deems necessary so to do in the public interest, by notification in the Official Gazette, exempt any goods or classes of goods from the operation of this section.

63. Application of sale proceeds.—(1) The proceeds of every sale under section 61 or section 62 shall be applied in the following order—

(a) in payment of the expenses of the sale;

(b) in payment, according to their respective priorities, of the liens and claims excepted in sub-section (2) of section 59 from the priority of the lien of the Board;

(c) in payment of the rates and expenses of landing, removing, storing or warehousing the same, and of all other charges due to the Board in respect thereof, including demurrage (other than penal demurrage) payable in respect of such goods for a period of four months from the date of landing;

(d) in payment of any penalty or fine due to the Central Government under any law for the time being in force relating to customs;

(e) in payment of any other sum due to the Board.

(2) The surplus, if any, shall be paid to the importer, owner or consignee of the goods or to his agent, on an application made by him in this behalf within six months from the date of the sale of the goods.

(3) Where no application has been made under sub-section (2), the surplus shall be applied by the Board for the purposes of this Act.

64. Recovery of rates and charges by distraint of vessel.—(1) If the master of any vessel in respect of which any rates or penalties are payable under this Act, or under any regulations or orders made in pursuance thereof, refuses or neglects to pay the same or any part thereof on demand, the Board may distrain or arrest such vessel and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount so due to the Board, together with such further amount as may accrue for any period during which the vessel is under distraint or arrest, is paid.

(2) In case any part of the said rates or penalties, or of the cost of the distress or arrest, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrest has been so made, the Board may cause the vessel or other things so distrained or arrested to be sold, and, with the proceeds of such sale, shall satisfy such rates or penalties and costs, including the costs of sale remaining unpaid, rendering the surplus (if any) to the master of such vessel on demand.

65. Grant of port-clearance after payment of rates and realisation of damages, etc.—If a Board gives to the officer of the Central Government whose duty it is to grant the port-clearance to any vessel at the port, a notice stating,—

(i) that an amount specified therein is due in respect of rates, fines, penalties or expenses chargeable under this Act or under any regulations or orders made in pursuance thereof, against such vessel, or by the owner or master of such vessel in respect thereof, or against or in respect of any goods on board such vessel; or

(ii) that an amount specified therein is due in respect of any damage referred to in section 116 and such amount together with the cost of the proceedings for the recovery thereof before a Magistrate under that section has not been realised,

such officer shall not grant such port-clearance until the amount so chargeable or due has been paid or, as the case may be, the damage and cost have been realised."

"**123. General power of Board to make regulations.—** Without prejudice to any power to make regulations contained elsewhere in this Act, a Board may make regulations consistent with this Act for all or any of the following purposes, namely:—

xxx xxx xxx

(c) for the form of receipt to be given under sub-section (2) of section 42;

(d) for the period within which notice may be given under sub-section (2) of section 43;

xxx xxx xxx

(i) for the mode of payment of rates leviable by the Board under this Act;"

"**131. Alternative remedy by suit.—**Without prejudice to any other action that may be taken under this Act, a Board may recover by suit any rates, damages, expenses, costs, or in the case of sale the balance thereof, when the proceeds of sale are insufficient, or any penalties payable to, or recoverable by, the Board under this Act or under any regulations made in pursuance thereof."

13. Since certain provisions of the Customs Act, 1962 were relied upon during the course of arguments, they are also set out as follows:

"**2. Definitions**.—In this Act, unless the context otherwise requires,—

xxx xxx xxx

(26) —"importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer;"

"**29. Arrival of vessels and aircrafts in India.—**(1) The person-in-charge of a vessel or an aircraft entering India

from any place outside India shall not cause or permit the vessel or aircraft to call or land—

(a) for the first time after arrival in India; or

(b) at any time while it is carrying passengers or cargo brought in that vessel or aircraft,

at any place other than a customs port or a customs airport, as the case may be unless permitted by the Board.

30. Delivery of arrival manifest or import manifest or import report.—(1) The person-in-charge of —

(i) a vessel; or

(ii) an aircraft; or

(iii) a vehicle,

carrying imported goods or export goods or any other person as may be specified by the Central Government, by notification in the Official Gazette, in this behalf shall, in the case of a vessel or an aircraft, deliver to the proper officer an arrival manifest or import manifest by presenting electronically prior to the arrival of the vessel or the aircraft, as the case may be, and in the case of a vehicle, an import report within twelve hours after its arrival in the customs station, in such form and manner as may be prescribed and if the arrival manifest or import manifest or the import report or any part thereof, is not delivered to the proper officer within the time specified in this sub-section and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or any other person referred to in this sub-section, who caused such delay, shall be liable to a penalty not exceeding fifty thousand rupees:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to deliver arrival manifest or import manifest by presenting electronically, allow the same to be delivered in any other manner.

(2) The person delivering the arrival manifest or import manifest or import report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

(3) If the proper officer is satisfied that the arrival manifest or import manifest or import report is in any way incorrect or incomplete, and that there was no fraudulent intention, he may permit it to be amended or supplemented."

"**33. Unloading and loading of goods at approved places only.—**Except with the permission of the proper officer, no imported goods shall be unloaded, and no export goods shall be loaded, at any place other than a place approved under clause (a) of section 8 for the unloading or loading of such goods."

"**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 may be approved by the Principal Commissioner of Customs or Commissioner of Customs until they are cleared for home consumption or are warehoused or are transhipped in accordance with the provisions of Chapter VIII.

46. Entry of goods on importation.—(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:

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

Provided further that 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 warehouse 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) The importer shall present the bill of entry under sub-section (1) before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

Provided that a bill of entry may be presented at any time not exceeding thirty days prior to the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

(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, and such other documents relating to the imported goods as may be prescribed.

(4A) The importer who presents a bill of entry shall ensure the following, namely:—

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

(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."

"**48. Procedure in case of goods not cleared, warehoused, or transhipped within thirty days after unloading.**—If any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transhipped within thirty days from the date of the unloading thereof at a customs station or within such further time as the proper officer may allow or if the title to any imported goods is relinquished, such goods may, after notice to the importer and with the permission of the proper officer be sold by the person having the custody thereof: Provided that —

(a) animals, perishable goods and hazardous goods, may, with the permission of the proper officer, be sold at any time;

(b) arms and ammunition may be sold at such time and place and in such manner as the Central Government may direct.

Explanation.— In this section, — "arms" and "ammunition" have the meanings respectively assigned to them in the Arms Act, 1959 (54 of 1959).

49. Storage of imported goods in warehouse pending clearance or removal.—Where,—

(a) in the case of any imported goods, whether dutiable or not, entered for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time;

(b) in the case of any imported dutiable goods, entered for warehousing, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied on the

application of the importer that the goods cannot be removed for deposit in a warehouse within a reasonable time,

the goods may pending clearance or removal, as the case may be, be permitted to be stored in a public warehouse for a period not exceeding thirty days:

Provided that the provisions of Chapter IX shall not apply to goods permitted to be stored in a public warehouse under this section:

Provided further that the Principal Commissioner of Customs or Commissioner of Customs may extend the period of storage for a further period not exceeding thirty days at a time."

"**150. Procedure for sale of goods and application of sale proceeds.—**(1) Where any goods not being confiscated goods are to be sold under any provisions of this Act, they shall, after notice to the owner thereof, be sold by public auction or by tender or with the consent of the owner in any other manner.

(2) The proceeds of any such sale shall be applied—

(a) firstly to the payment of the expenses of the sale,

(b) next to the payment of the freight and other charges, if any, payable in respect of the goods sold, to the carrier, if notice of such charges has been given to the person having custody of the goods,

(c) next to the payment of the duty, if any, on the goods sold,

(d) next to the payment of the charges in respect of the goods sold due to the person having the custody of the goods,

(e) next to the payment of any amount due from the owner of the goods to the Central Government under the provisions of this Act or any other law relating to customs, and the balance, if any, shall be paid to the owner of the goods.

> Provided that where it is not possible to pay the balance of sale proceeds, if any, to the owner of the goods within a period of six months from the date of sale of such goods or such further period as the Commissioner of Customs may allow, such balance of sale proceeds shall be paid to the Central Government."

14. A perusal of the relevant provisions of the MPT Act would show that when section 2(o) defines "owner", it defines owner in relation to goods separately from owner in relation to any vessel. In sub-clause (i) of section 2(o), when owner is defined in relation to "goods", the definition is an inclusive one. Secondly, it includes persons who are owners of the goods, or persons beneficially entitled to the goods, such as the consignor, consignee and the shipper and then also includes agents for sale, custody, loading or unloading of such goods. Ordinarily, agents for the sale or custody of goods would relate only to agents of the owner or persons beneficially entitled to such goods, which would certainly exclude the ship-owner and the ship-owner's agent. However, considering the fact that the definition is an inclusive definition, and that loading or unloading of goods can take place by the steamer's agent, as was held in **Rowther-I** (supra), it is difficult to accept the contention on behalf of the steamer's agent that such persons would not be included within the definition of "owner" under the MPT Act.

15. For these reasons, it is not possible to apply the doctrine of *noscitur a sociis* to the definition of "owner" under section 2(o), as was contended by the learned Senior Advocates appearing on behalf of the steamer agents. In **Brindavan Bangle Stores and Ors. v. Asst. Commissioner of Commercial Taxes and Anr.** (2000) 1 SCC 674, this Court held:

> "**7.** The second contention raised on behalf of the appellants related to the clarity and ambiguity of Entry 30 and Entry 54 and application of such construction of *noscitur à sociis*. In our opinion the learned Division Bench of the Karnataka High Court has rightly held that the said rule of construction has no application to the facts and circumstances of the case. This Court in *State of Bombay* v. *Hospital Mazdoor Sabha* [AIR 1960 SC 610] has considered in detail the rule of construction *noscitur à sociis* and in para 9, it is observed thus:
>
> "We are not impressed by this argument. It must be borne in mind that *noscitur à sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but, where the object of the legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service."
>
> **8.** As stated earlier on reading Entry 30 and Entry 54, we have no manner of doubt that there is neither any ambiguity nor do they lack any clarity. The legislature intended to levy and collect entry tax on the articles mentioned in both these entries. The words used therein are of wider import and clearly indicate that all articles made of glass or made from

> all kinds of all forms of plastic including articles made of polypropylene, polystyrene and like materials are subjected to payment of entry tax. It cannot be disputed that the articles in question, namely, bangles are made of glass and/or made of plastic etc. The impugned judgment has very succinctly dealt with the contentions raised on behalf of both the parties and also dealt with the various reported decisions of this Court and other High Courts in great length. We are in complete agreement with the view taken by the Division Bench."

16. In the present case, we find no lack of clarity in the expression "agent for the…loading or unloading of such goods", as including persons who may be the vessel's agent involved in unloading goods. As the definition of "owner" is inclusive, as stated hereinabove, the non-mention of the ship-owner in the first part of the definition makes no difference, as it would be incongruous to hold that the shipowner's agent is included in the latter part of the definition, but not the ship-owner itself, which would indicate that the maxim *noscitur a sociis* cannot apply.

17. This becomes even clearer when section 42 is perused. Under section 42(1), a Board shall have power to undertake services insofar as landing, shipping or transhipping goods between vessels in the port and the wharves, piers, quays or docks belonging to or in the possession of the Board, referring clearly, therefore, to services rendered to the vessel (*see* section 42(1)(a)). Insofar as receiving, removing, shifting, or transporting goods is concerned, these could be

services to both the vessel as well as the owner/person entitled to the goods. The moot question is, when it comes to “storing” goods brought within the Board’s premises, whether such service could be said to be a service rendered to the vessel or its agent (*see* section 42(1)(b)). Some of the pivotal provisions of the MPT Act, insofar as the present questions are involved, are contained in sections 42(2), 42(7) and 43 of the Act. Under section 42(2), a Board may, if so requested by the “owner”, take charge of the goods for the purpose of performing services, and shall give a receipt in such form as the Board may specify. It is obvious that if the ship-owner or its agent are not “owners”, the Board cannot take the charge of the goods from the ship-owner or its agent for the purpose of performing services, a result which would lead to startling consequences. Secondly, under sub-section (7), once goods have been taken charge of and a receipt given for them, no liability for any loss or damage which may occur to them shall attach to any person to whom a receipt has been given (this would include any of the persons mentioned in section 2(o)(i), including the vessel’s agents), or to the master or owner of the vessel from which the goods have been landed or transhipped. This would again make it clear that the master or owner of the vessel and their agents, from this point on, have been absolved from liability for loss or damage to the goods, as

the Board has now taken over the custody of the goods from such master or owner of the vessel. From this point on, therefore, the master or owner of the vessel and their agents cease to have any liability qua the goods, inasmuch as the Port Trust has now taken them over. Concomitantly, under section 43(1)(ii), the responsibility of the Port Trust for loss, destruction or deterioration of goods of which it has taken charge from this point of time onwards now becomes that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872, omitting the words “in the absence of any special contract” in section 152 of the Contract Act. This responsibility attaches only after a receipt is given by the Board, and notice of loss or damage has been given, after expiry of such period (as may be prescribed) from the crucial date on which the Port Trust takes charge of the goods.

18. At this juncture, it is important to state that arguments have been made based on observations contained in various judgments in which sections 42 (5) and (6) of the MPT Act have been referred. Sections 42(5) and (6) have no application to the Board, as they apply only to the “person” authorised under section 42(3) by the Board to perform services mentioned in sub-section (1).

19. Again, under section 48, a distinction is made between landing of goods from a vessel, and storage or demurrage charges in respect of

goods – *see* section 48(1)(b), as contrasted with section 48(1)(d). When it comes to services performed on vessels, sections 49A, 49B, 50, 50A and 50B make it clear that the services rendered to vessels for which dues have to be paid by vessels are entirely separate and distinct from services rendered insofar as goods that are landed are concerned.

20. Coming to section 59, it becomes clear that for all rates leviable under the MPT Act, which includes rates leviable for storage of goods, the Board shall have a lien on such goods, and may, after custody of such goods is taken by the Port Trust, then seize and detain the same until such rates are fully paid.

21. Section 60 is also important, in that the ship-owner's lien for freight and other charges is recognised if, at or before the time of landing of any goods from such vessel, such freight or other charges have not been paid. Under section 60(2), the goods shall be retained in the custody of the Board at the risk and expense of the owners of the goods until such lien is discharged. Most importantly, godown or storage rent shall be payable by "the party entitled to such goods" for the time during which they may be so retained. This section is of crucial importance, as it makes it clear that godown or storage rent is payable only by the party entitled to such goods, which can never be the ship-owner or the

ship-owner's agent after the goods have been landed, and the vessel has sailed away from the port. Further, under section 61, after two months from the time goods have passed into the Board's custody, the Board may, if it thinks fit, sell – by the modalities laid down – such goods or so much thereof as may be necessary to recover the rates payable to the Board which remain unpaid. Sub-section (3) of section 61 is very important, in that before making such sale, if the address of the "owner of the goods" which has been stated on the manifest, or in other documents that have come into the hands of the Board, or is otherwise known, notice of such sale must be given to such owner.

22. Section 62 speaks of the disposal of goods that have not been removed from the premises of the Board within time, and speaks of their removal by the "owner or other person entitled thereto". Under sub-section (2) of section 62, where such goods are proposed to be removed or sold, a notice may also be served on the "agents of the vessel by which such goods were landed". This is for the reason that the vessel's agents may have indicated that the ship-owner has a lien for freight and other charges, which must be satisfied out of the sale of such goods. The important point to be noted is that a clear distinction is made between an "owner or other person entitled" to goods, and agents of the vessel. Further, under sub-section (3) of section 62, it is

only if the owner or person entitled to goods does not comply with the requisition in the notice, that the Board may, at any time after the expiration of two months from the date on which such goods were placed in its custody, then sell the goods in the manner indicated. The scheme of section 62, therefore, is that when it comes to sale of goods which are lying stored in the premises of the Board, notice is to be given only to the owner, or other persons who are beneficially entitled to the goods, who must then comply with the requisition given and remove the goods. At this juncture, the ship-owner or its agents are not persons who have to comply with such requisition, as they are neither persons who are the owner, or other persons entitled to the goods. The notice issued to the agent of the vessel is only for the limited purpose as aforesaid. This again indicates that goods that are stored on the premises of the Board have a nexus *only* with the owner or other persons entitled to those goods, and not with the agent of the vessel or the vessel itself.

23. Section 63 is again very important. When goods have been sold and a surplus exists, the surplus shall be paid to only three persons or their agents, namely, the “importer”, “owner” or “consignee” of the goods. In this sub-section, namely, 63(2), as in the case of “owner’ under section 61(3), the owner of the goods is obviously not the “owner” as

defined under section 2(o), as the context of section 63(2) indicates otherwise. There would have been no need to add “importer” or “consignee” in this sub-section, as they are already subsumed within the wider definition of “owner” in relation to goods under section 2(o). Secondly, what is conspicuous by its absence is mention of the vessel or any agent for loading or unloading goods. As a matter of fact, when it comes to recovery of rates and charges against the vessel, a separate remedy is provided for in sections 64 and 65 of the MPT Act.

24. The statutory scheme of the MPT Act now becomes crystal clear. Until the stage of landing and removal to a place of storage, the steamer’s agent or the vessel itself may be made liable for rates payable by the vessel for services performed to the vessel. Post landing and removal to a place of storage, detention charges for goods that are stored, and demurrage payable thereon from this point on, i.e. when the Port Trust takes charge of the goods from the vessel, or from any other person who can be said to be owner as defined under section 2(o), it is only the owner of the goods or other persons entitled to the goods (who may be beneficially entitled as well) that the Port Trust has to look to for payment of storage or demurrage charges.

25. At this juncture, the Customs Act, 1962 also becomes relevant. Under section 2(26), “importer” is defined as including any owner, beneficial

owner or any person holding himself out to be the importer. Though this definition does not *ipso facto* apply to the MPT Act, it is important that the two Acts be read together, as both Acts deal with goods that are imported into the country from abroad, and their storage and disposal thereafter. In any event, the expression "importer" that occurs in section 63(2) of the MPT Act would certainly include a beneficial owner of the goods.

26. Under section 29 of the Customs Act, the person-in-charge of a vessel when it carries cargo can land only at a "customs port" (as defined), unless otherwise permitted by the Central Board of Excise. Under section 30, the person-in-charge of a vessel carrying imported goods shall deliver to the "proper officer", i.e. a customs officer, an import manifest of the vessel within the time prescribed, which would indicate the nature of the goods carried by the vessel, and the consignee or other owner of the goods. Under section 33, no such imported goods can be unloaded at any place other than the place approved for unloading of such goods in the customs port, customs airport or coastal port. Under section 45(1), all imported goods unloaded in a customs area shall remain in the custody of such person as approved by the Principal Commissioner of Customs or Commissioner of Customs until they are cleared for home consumption or are warehoused or

transhipped. Section 46(1) is extremely important in that it speaks of a bill of entry for home consumption or warehousing in such form and manner as may be prescribed. Section 46(2) then states that 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. Under section 48, if any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transhipped within 30 days from the date of the unloading, such goods may, after notice to the "importer" and with permission of the proper officer, be sold by the person having the custody thereof.

27. Under section 49, imported goods may, pending clearance or removal, be permitted to be stored in a public warehouse for a period not exceeding 30 days, or such other extended period that the Principal Commissioner or Commissioner of Customs may permit. The Customs Act, therefore, also contains parallel provisions for authorities under that Act to take charge of, store, and sell imported goods, in the circumstances mentioned therein.

28. It was argued that carrying goods in a container would, in any case, make a difference to the position that only the owner of the goods or person entitled to the goods is liable to pay for demurrage. According to the Port Trust, when goods are imported in a container, and the

container is then landed without the goods being destuffed, and the container belongs to the ship-owner's agent and has to be returned to the ship-owner's agent, for the duration that the container takes up storage space, storage charges will have to be paid by the ship-owner's agent. Let us examine whether this argument is sound in law.

29. Under the Customs Act, 1962, customs duties are levied on goods imported into India. "Import" has been defined in section 2(23) of the Customs Act as the "bringing into India from a place outside India". Thus, import of goods can only be said to be complete after they cross into the territorial waters of India, and become part of the mass of goods within India. This is the law laid down by this Court in **Garden Silk Mills Ltd. and Anr v. Union of India and Ors.** (1999) 8 SCC 744, as follows:

> "**17.** It was further submitted that in the case of Apar (P) Ltd. [(1999) 6 SCC 117] this Court was concerned with Sections 14 and 15 but here we have to construe the word "imported" occurring in Section 12 and this can only mean that the moment goods have entered the territorial waters the import is complete. We do not agree with the submission. This Court in its opinion in Bill to Amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excises and Salt Act, 1944, Re observed as follows:
>
> "Truly speaking, the imposition of an import duty, by and large, results in a condition which must be fulfilled before the goods can be brought inside the customs barriers, i.e., before they form part of the mass of goods within the country."

> **18.** It would appear to us that the import of goods into India would commence when the same cross into the territorial waters but continues and is completed when the goods become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the customs barriers and the bill of entry for home consumption is filed."

30. Likewise, in **Mangalore Refinery & Petrochemicals Ltd. v. Commissioner of Customs** (2016) 14 SCC 709, this Court dealt with when an import could be said to be complete under the Customs Act. After referring to various provisions of the Customs Act, this Court held:

> "**9.** On a reading of the aforesaid provisions, it is clear that the levy of customs duty under Section 12 is only on goods imported into India. Goods are said to be imported into India when they are brought into India from a place outside India. Unless such goods are brought into India, the act of importation which triggers the levy does not take place. If the goods are pilfered after they are unloaded or lost or destroyed at any time before clearance for home consumption or deposit in a warehouse, the importer is not liable to pay the duty leviable on such goods. This is for the reason that the import of goods does not take place until they become part of the land mass of India and until the act of importation is complete which under Sections 13 and 23 happens only after an order for clearance for home consumption is made and/or an order permitting the deposit of goods in a warehouse is made. Under Section 23(2) the owner of the imported goods may also at any time before such orders have been made relinquish his title to the goods and shall not be liable to pay any duty thereon. In short, he may abandon the said goods even after they have physically landed at any port in India but before any of the aforesaid orders have been made. This again is for the good reason that the act of importation is only complete when goods are in the hands of the importer after they have been cleared either for home consumption or for deposit in a warehouse. Further, as per Section 47 of the Customs Act, the importer has to pay import duty only on goods that are entered for

home consumption. Obviously, the quantity of goods imported will be the quantity of goods at the time they are entered for home consumption.

xxx xxx xxx

14. We are afraid that each one of the reasons given by the Tribunal is incorrect in law. The Tribunal has lost sight of the following first principles when it arrived at the aforesaid conclusion. First, it has lost sight of the fact that a levy in the context of import duty can only be on imported goods, that is, on goods brought into India from a place outside of India. Till that is done, there is no charge to tax. This Court in *Garden Silk Mills Ltd.* v. *Union of India*, stated that this takes place, as follows:

"17. It was further submitted that in Apar (P) Ltd. [Union of India v. Apar (P) Ltd., (1999) 6 SCC 117] this Court was concerned with Sections 14 and 15 but here we have to construe the word "imported" occurring in Section 12 and this can only mean that the moment goods have entered the territorial waters the import is complete. We do not agree with the submission. This Court in its opinion in Sea Customs Act, 1878, S. 20(2), In re [Sea Customs Act, 1878, S. 20(2), In re, AIR 1963 SC 1760] SCR at p. 823 observed as follows:

'26. … Truly speaking, the imposition of an import duty, by and large, results in a condition which must be fulfilled before the goods can be brought inside the customs barriers i.e. before they form part of the mass of goods within the country.'

18. It would appear to us that the import of goods into India would commence when the same cross into the territorial waters but continues and is completed when the goods become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the customs barriers and the bill of entry for home consumption is filed."

31. However, another line of judgments deals with what was called the "original package" doctrine laid down by Chief Justice Marshall of the US Supreme Court in **Brown v. State of Maryland** 25 U.S. 419 (1827). This judgment laid down that while the goods imported remained the property of the importer in the original form of packaging in which it was imported, a tax upon it would be "imposts or duties on imports" without the consent of the Congress, violating section 10(2) of Article I of the US Constitution. In addition, any such "impost or duty" would also violate the Commerce clause under section 8(3) of Article I of the said Constitution, which grants power to the Congress to regulate commerce with foreign nations. Thus, a State legislature has no power to impose an "impost or duty" upon the first sale of the commodity so long as it remained in the importer's hands[1].

32. This doctrine has been the subject-matter of comment in a variety of different situations. Thus, in the **Province of Madras v. Boddu Paidanna & sons**, A.I.R. (29) 1942 Federal Court 33 (at page 37), in the context of sales tax legislation by the States, the Federal Court

[1] In two later judgments of the US Supreme Court, **Michelin Tire Corporation v. Wages** 423 U.S. 276 (1976) and **Limbach v. Hoover & Allison Company** 466 U.S. 353 (1984), judgments following **Brown** (supra) enunciating the "original package" doctrine were reversed, stating that non-discriminatory taxes which did not fall on imports as such, or interfere with the free flow of imported goods amongst the States, could not be said to be contrary to the Commerce clause or contrary to Section 10(2) of Article I of the US Constitution. A different approach was adopted to Section 10(2) of Article I, ignoring the question whether the goods were imported, and instead analysing the nature of the tax to determine whether it was an "impost or duty".

referred to Chief Justice Marshall's judgment, and distinguished the same, saying that it would apply to the Commerce clause in the US Constitution, and would not apply by analogy to the legislative entries under the Seventh Schedule of the Government of India Act (1935). Likewise, in **State of Bombay and Anr. v. F.N. Balsara** 1951 SCR 682, in the context of a law passed by the Legislature of the Province of Bombay relating to prohibition of intoxicating liquors, an argument based on Chief Justice Marshall's dictum in **Brown** (supra) was made, stating that in pith and substance such law would relate to import and export of intoxicating liquors, and therefore be void. This was turned down, referring to **Boddu Paidanna** (supra), stating that in the American judgment the widest meaning could be given to the Commerce clause as there was no question of reconciling that clause with another clause containing the legislative power of the State – see pages 696 to 700.

33. In **Central India Spinning and Weaving and Manufacturing Company, Ltd. v. The Municipal Committee, Wardha** 1958 SCR 1102, this Court, in the context of a terminal tax, relied upon the dictum of Chief Justice Marshall in **Brown** (supra) in order to answer the question before it, namely, whether a terminal tax can be levied on

goods which are in transit. The question was answered in the negative – see pages 1114 and 1121.

34. In **Gramophone Company of India Ltd. v. Birendra Bahadur Pandey & Ors.** (1984) 2 SCR 664, **Central India Spinning and Weaving** (supra) was distinguished, and **Boddu Paidanna** (supra) and **F.N. Balsara** (supra) were relied upon, to interpret the word "import" as found in the Copyright Act, 1957. Cases under the Customs Act were expressly distinguished by this judgment as follows:

> "The learned counsel for the appellant invited our attention to *Radhakishan* v. *Union of India* [1965 2 SCR 213]; *Shawhney* v. *Sylvania and Laxman* [77 Bom LR 380]; *Bernado* v. *Collector of Customs* [AIR 1960 Ker 170], to urge that importation was complete so soon as the customs barrier was crossed. They are cases under the Customs Act and it is needless for us to seek aid from there when there is enough direct light under the Copyright Act and the various conventions and treaties which have with the subject "copyright" from different angles. We do not also desire to crow our judgment with reference to the history of the copyright and the customs legislations in the United Kingdom and India as we do not think it necessary to do so in this case."[2]

35. A recent judgment of this Court in **State of Kerala & Ors. v. Fr. William Fernandez Etc.** 2017 SCC OnLine SC 1291, was concerned with the validity of various State legislations relating to entry tax. As many as eight issues were raised by this Court, in which issue (iv) reads as follows:

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[2] Page 691.

> "**44(iv)**. Whether the importation of goods, imported from a territory outside the India continues till the goods reach in the premises/factory of the importer, during which period State at no point of time is legislative competence to impose any tax."

36. The discussion in answering this question raised in paragraph 44(iv) begins in paragraph 86. After referring to various definitions of the term "import" in different legal situations, this Court noticed various judgments relating to customs in paragraphs 97 to 103. As a matter of fact in paragraph 103, the law laid down in **Garden Silk Mills Ltd.** (supra) was extracted with approval as follows:

> **103.** Similar view was expressed in the case of *Garden Silk Mills Ltd.* v. *Union of India*, (1999) 8 SCC 744, in paragraph 18, which is to the following effect:—
>
> *"**18.** It would appear to us that the import of goods into India would commence when the same cross into the territorial waters but continues and is completed when the goods become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the customs barriers and the bill of entry for home consumption is filed."*

37. These judgments were then distinguished by the Court as follows:

> "**104.** The law relating to customs has been consolidated by the Customs Act, 1962. The definitions of "import", "imported goods" and "importer" have already been noticed above. The definition of imported goods as given in Section 2(25) is-any goods brought into India from the place outside India <u>but does not include goods, which have been cleared for home consumption</u>. The provision clearly contemplates that once the goods are released for home consumption, the character of imported goods is lost and thereafter no longer the goods could be called as imported goods. The import transit is only till the goods are released for home

> consumption. The taxing event for entry tax under Entry 52 List II is entirely different and has nothing to do with the customs duty. The State by imposing entry tax in any manner is not entrenching in the power of the Parliament to impose customs duty. The goods are released for home consumption only after payment of the customs duty due to the Central Government. The goods which are imported cannot be held to be insulated so as to not subject to any State tax, any such insulation of the imported goods shall be a protectionist measure which will be discriminatory and invalid. When all normal goods are subjected to State tax no exemption can be claimed by goods, which have been imported from payment of entry tax. To take a common example, all goods, which pass through a toll bridge are liable to pay toll tax, can it be said that the imported goods which after having been released from customs barriers and are passing through a toll bridge, are not liable to pay the toll tax, the answer has to be in No. Thus, the event for levy of customs duty, which is in the domain of the Parliament, is entirely different from that of event of entry tax. The liability to pay State entry tax arises only when goods enter into a local area for consumption, use and sale, which event is entirely different and separate from the levy of a customs duty, which is on import."
>
> (emphasis in original)

38. The judgment went on to discuss the "original package" doctrine of Chief Justice Marshall in paragraphs 108 to 120, finding that recent US Supreme Court judgments had abandoned this doctrine, and that therefore, the Federal Court in **Boddu Paidanna** (supra) and the two judgments of this Court in **F.N. Balsara** (supra) and **Gramophone Company of India Ltd.** (supra) were correct in not relying on this doctrine in the context of the cases before them. This doctrine has no place in the customs law of India, the judgments of this Court

concentrating on when an import can be said to be complete on an analysis of the Customs Act.

39. Given the aforesaid judgments under the Customs Act, a container, being a receptacle in which goods are imported, cannot be said to be “goods” that are imported as it does not become part of the mass of goods within the country on the facts of these cases. Thus, once destuffing takes place, the container has to be returned either to the ship-owner’s agent, or to the person who owns such container.

40. In fact, the Bill of Entry (Forms) Regulations, 1976 (as amended up to date) contain forms in which a Bill of Entry is to be presented by an importer of goods for home consumption, or for warehousing, or for ex-bond clearance for home consumption. Regulation 3 of the aforesaid Regulations reads as follows:

> “**3. Form of Bill of Entry.**- The Bill of Entry to be presented by an importer of any goods for home consumption or for warehousing or for ex-bond clearance for home consumption shall be in Form I or Form II or Form III as the case may be.
>
> *Explanation* - In this regulation, "goods" does not include those goods which are intended for transit or transshipment.”

41. Form I, which speaks of a Bill of Entry for home consumption, contains a declaration to be signed by an importer, clause 6(b) of which is important and is set out hereunder:

"**6(b)** I/We declare that there are the following payments actually paid or payable for the imported goods by way of cost and services other than those declared in the invoice^

[^please refer to Rule 10 (1) (a) & (b) of the Customs Valuation Rules, 2007]

Sl. No.	Particulars	Amount or expressed as % of the unit price
i.	Brokerage and Commissions, except buying commission [Rule 10(1)(a)(i) of the Customs Valuation Rules, 2007]:	
ii.	Cost of containers [Rule 10(1)(a)(ii)]:	
iii.	Packing cost [Rule 10(1)(a)(iii)]:	
iv.	Cost of goods and services supplied by the buyer [Rule 10(1)(b)]:	

"

42. The same declaration is contained in Forms II and III. A perusal of the aforesaid Forms prescribed under the said Regulations would show the difference between "goods" that are imported, which have reference to the bill of lading/invoice presented by the importer which contains the number and value of the goods imported, and payments by way of costs and services other than those declared in the invoice, which includes costs of containers under Rule 10(1)(a)(ii) of the

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and packing costs under Rule 10(1)(a)(iii) of these Rules. This leads to an examination of the aforesaid Rules.

43. Rules 2(1)(d) and (f) of these Rules are relevant, and are set out hereinbelow:

> "**2. Definitions.-**
>
> (1) In these rules, unless the context otherwise requires,-
>
> *xxx xxx xxx*
>
> (d) "identical goods" means imported goods-
>
> (i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;
>
> (ii) produced in the country in which the goods being valued were produced; and
>
> (iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;
>
> *xxx xxx xxx*
>
> (f) "similar goods" means imported goods –
>
> (i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being

valued having regard to the quality, reputation and the existence of trade mark;

(ii) produced in the country in which the goods being valued were produced; and

(iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;"

44. Rule 4 deals with the transaction value of "identical goods", and Rule 5 deals with the transaction value of "similar goods", and are set out hereinbelow:

"**4. Transaction value of identical goods.–**

(1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference

attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

5. Transaction value of similar goods.-

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, *mutatis mutandis*, also apply in respect of similar goods."

45. A perusal of these Rules would show that the value of imported goods shall be the transaction value of identical goods, as defined, or similar goods, as defined – whichever rule applies to the facts of each particular case. It is clear that whether identical goods or similar goods are taken into account, the price of the container never enters, as the

only “goods” that are to be looked at are the goods that are “imported”, i.e. goods that are stuffed in the containers. Likewise, when it comes to “computed value”, Rule 8 states as follows:

> “**8. Computed value.-** Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-
>
> (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
>
> (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;
>
> (c) the cost or value of all other expenses under sub-rule (2) of rule 10.”

46. Rule 10, which deals with “costs and services” then states:

> “**10. Costs and services.-**
>
> (1) In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods, -
>
> (a) the following to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely:-
>
> *xxx xxx xxx*
>
> (ii) the cost of containers which are treated as being one for customs purposes with the goods in question;”

47. A reading of Rule 10(1)(a)(ii) would lead to the same result, as “imported goods” are differentiated from “containers”. Further, for the purposes of customs valuation, addition to the transaction value of the

imported goods is made only when the cost of containers is treated as being one with the goods in question. Even in such a situation, what is then imported is the "goods" and the container – the container not having to be destuffed, and therefore being cleared along with the goods contained therein for home consumption. In such a case, where containers do not have to be returned, but are imported along with the goods contained within it, after the Board takes custody of such container and the goods within it, the vessel or steamer agent is no longer liable – even containers that do not need to be destuffed will then incur demurrage along with the goods contained within it, which are then payable by the importer, owner, consignor or agent thereof.

48. Further, to make matters clear beyond doubt, General Exemption No. 170, which speaks of 'Exemption to containers of durable nature'[3], states as follows:

> "In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts containers which are of durable nature, falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from, -
>
> (a) the whole of the duty of customs leviable thereon under the said First Schedule; and

[3] Notification No. 104/94 dated 16.03.1994 as amended by Notification No. 101/95 and 43/17.

(b) the whole of the integrated tax leviable thereon under sub-section (7) of section 3 of the said Customs Tariff Act:

Provided that the importer, by execution of a bond in such form and for such sum as may be specified by the Assistant Commissioner of Customs or Dy. Commissioner of Customs binds himself to re-export the said containers within six months from the date of their importation and to furnish documentary evidence thereof of the satisfaction of the said Assistant Commissioner and to pay the duty leviable thereon in the event of the importer's failure to do so:

Provided further that in any particular case, the aforesaid period of six months may, on sufficient cause being shown, be extended by the said Assistant Commissioner for such further period, as he may deem fit."

A clarification by the Central Board of Indirect Taxes and Customs dated 25th October, 2002[4], clarified as to what is meant by "containers of durable nature" as follows:

"Notification No.104/94-Cus., exempts containers which are of durable nature from the whole of the duty of customs and additional duty subject to the condition that such containers are re-exported within 6 months from the date of importation and documentary evidence is furnished to the satisfaction of the Assistant Commissioner. As per the meanings assigned to the words "durable" and "container" in various Dictionaries, it would appear that any goods (containers) used for packaging or transporting other goods, and capable of being used several times, would fall in the category of "containers of durable nature".

A reading of the aforesaid also goes to buttress the conclusion reached in the previous paragraph of this judgment.

[4] Circular No.69/2002-Customs.

49. The Customs Tariff Act, 1975 also throws considerable light on containers fit for repetitive use. Section 2 of the said Act states as follows:

> "**2. Duties specified in the Schedules to be levied.—** The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules."

50. The First Schedule deals with general rules for interpretation of "this Schedule", and states:

> "5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:
>
> (a) camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;
>
> (b)subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use."

51. This paragraph again clearly differentiates between containers which go along with the goods contained therein "suitable for long-term use", from containers "suitable for repetitive use", thus making it clear that

the containers of the latter type cannot be classified with the goods contained therein for payment of customs duty.

52. At this juncture, it is important to examine the judgments of this Court. In **Rowther-I** (supra), the question before five honourable Judges of this Court arose out of the enforcement of the Scale 'E' rate that was added to the Madras Port Trust Scale of Rates in 1958. The question arose under the *pari materia* provisions of the Madras Port Trust Act, 1905 ("**Madras Act**"), which has since been repealed by the MPT Act by section 133(2C) thereof. The respondents in this case were steamer agents. Scale 'E' laid down charges to be paid by Masters, Owners or Agents of vessels in respect of Port Trust labour requisitioned and supplied, but not fully or properly utilised, for unloading goods from the vessel. These rates are set out at pages 923 and 924 of the Supreme Court Report, and indicate that a certain amount has to be paid to labour which is rendered idle either on account of the vessel's fault, or on account of *force majeure* conditions such as rain. This is further fleshed out by a Circular dated 25.02.1958, referred to at pages 925 and 926. After setting out the relevant sections of the Madras Act, the by-laws, and the Manual of Instructions framed and issued by the Board, the first proposition of law laid down in the said judgment is that it is not obligatory on behalf of the Board to undertake the various

services mentioned in section 39 of the Madras Act (which is *pari materia* with section 42 of the MPT Act). It is only if such services are required by the "owner" as defined that such services are undertaken by the Board. It was then held that it was the steamer agent who was in a position to require the Board to undertake such services in respect of the cargo that the ship is to unload (see pages 935 to 936). The question for determination was then set out as follows:

> "The question for determination, in the case, then is whether the law making the steamer-agent liable to pay these charges is good law."[5]

53. "These charges", as has been stated earlier, were on account of payment of labour dues for labour remaining idle, such labour being of the Port Trust which was used in the unloading of goods from the vessel. It was then mentioned that these charges were for the benefit of the vessel so that it completes its task of landing the goods as soon as possible. It was also pointed out that the steamer agent, and not the consignee, was liable to pay these charges as the goods are not unloaded "consignee-wise" (see page 938-939). It was then laid down that the ship-owner is the bailee of the consignor, and that he is responsible for delivery of goods to the consignee or transferee according to the terms of the bill of lading. However, the Court held that

[5] Page 937.

delivery of goods by the ship-owner to the Board cannot be said to be delivery to the consignee, as the Board cannot be said to be an agent of the consignee for the purpose of taking delivery of goods (see page 939). Also, the Court observed that the provision of lien which the Board can exercise on the goods for non-payment of dues of the Board makes it clear that it does not act as an agent of the consignee (see page 947). The Court also held that when section 39(3) of the Madras Act speaks of taking of charge of the goods by the Board and giving a receipt to a ship-owner, and the master or owner of the vessel being absolved from liability for any loss or damage which may occur to the goods which had been landed, also does not lead to the conclusion that the Board takes delivery of those goods on behalf of the consignee. The Court then held:

> "It is clear therefore that when the Board takes charge of the goods from the ship-owner, the ship-owner is the bailor and the Board is the bailee, and the Board's responsibility for the goods thereafter is that of a bailee. The Board does not get the goods from the consignee. It cannot be the bailee of the consignee. It can be the agent of the consignee only if so appointed, which is not alleged to be the case, and even if the Board be an agent, then its liability would be as an agent and not as a bailee. The provisions of ss.39 and 40, therefore, further support the contention that the Board takes charge of the goods on behalf of the ship-owner and not on behalf of the consignee, and whatever services it performs at the time of the landing of the goods or on their removal thereafter, are services rendered to the ship."[6]

[6] Page 940.

54. This passage clearly states that since the Board does not get the goods directly from the consignee, but only from the ship-owners, it cannot possibly be said to be the bailee of the consignee. The observation that whatever services the Board performs at the time of landing of the goods, or "on their removal thereafter" are services rendered to the ship, must be understood in the context of the facts of that case. A perusal of the Board's counter affidavit, which is reflected at page no.921, would show that the Harbour dues on the import of cargo speaks, *inter alia,* of charges involved in moving the goods from the landing point to the storage point. The expression "on their removal thereafter", on the facts of this case, would therefore only mean services performed by the Board from landing point to storage point, and not thereafter. This is in fact made even clearer by the following passage in the said judgment:

> "The charges for labour rendered idle and for labour working more hooks simultaneously, are not charges for services rendered subsequent to the landing of the goods. These are charges which are incurred at the last stage of the process of landing of the goods and therefore prior to the actual landing of the goods. They are, even under the general law, for services rendered to the master of the ship whose liability for loss or of damage to the goods continues up to the placing of the goods on the quay and their receipt by the Board."[7]

[7] Page 942.

55. While dealing with the case of **Peterson v. Freebody & Co.** [1895] 2 Q.B.D. 294, which related to a suit between the ship-owner and the consignee, the observations of Lord Esher that the ship-owner must do something more than merely put his goods over the rail of his ship, namely, that he must put the goods in such position that the consignee can take delivery of them, were limited only to goods which are to be delivered to the consignee alongside the ship, and not when they are handed over to a statutory body like the Board, as a sub-bailee. The delivery therefore contemplated by these observations was held to be not equivalent to landing of the goods at the quay and placing them in charge of the Board. The observations as to the Board being a sub-bailee were therefore made to counter an argument based on an English judgment, that delivery of the goods to the Board amounts to delivery to the consignee, which would therefore make the consignee liable to pay the aforesaid unloading charges.

56. The second judgment with which we are concerned is **Rowther-II** (supra). The question that arose before a three-Judge Bench of this Court was whether demurrage charges payable to the Port Trust of Madras were to be recovered from the consignee of the goods, or from the steamer agent. The judgment of this Court, in essence, extracted

the judgment of the High Court that was impugned therein, and then agreed with the same. The High Court had held:

> "It cannot be disputed that neither the shipowner or the steamer agent whose duty it is to deliver the cargo to the consignee as per the contract with the shipper, cannot lay any claim of ownership to the goods. The obligation to deliver the goods to the consignee has been taken over by the Port Trust under the provisions of the statute and the shipowner is relieved of the liability for loss or damage to the goods from the moment the goods are taken charge of by the Port Trust as per Section 39 of the Act. Once the goods are handed over to the Port Trust by the steamer and the steamer agents have duly endorsed the bill of lading or issued the delivery order, their obligation to deliver the goods personally to the owner or the endorsee comes to an end. The subsequent detention of the goods by the Port Trust as a result of the intervention by the Customs authorities cannot be said to be on behalf of or for the benefit of the steamer agents. Generally, if there is a delay in taking delivery of the goods by the consignee within a reasonable time, the steamer or its agent can warehouse the goods. In such an event the warehouseman has an independent claim against the consignee or endorsee for the demurrage charges. The position cannot be different merely because the Customs authorities have intervened. The position of the Port Trust is the same as that of a warehouseman whose responsibility to the goods is also said to be a bailee. It cannot be said that the steamer or its agents have undertaken any responsibility for the custody of the goods after the transit has come to an end and after the bill of lading has been duly endorsed or a delivery order issued. By the endorsement of the bill of lading or the issue of a delivery order by the steamer agents, the property in the goods vests on such consignee or endorsee, and thus it appears to be clear that the steamer or the steamer agents are not responsible for the custody of the goods after the property in the goods passes to the consignee or endorsee till the Customs authorities actually give a clearance. It should also be remembered that the steamer which had entered into a contract of carriage of goods for a reward cannot be said to

have undertaken the responsibility of safeguarding the goods or keeping them at their risk till the goods are actually cleared from the Customs and taken delivery of by the consignee. That will be imposing a too onerous and unexpected responsibility on the steamer which is only a carrier. If they are submitted to such a responsibility, in most cases where the goods are detained without delivery in the hands of the Port Trust at the instance of the Customs the steamer or steamer agents have to pay towards a storage or demurrage charges amounts quite disproportionate to the freight they collect for the carriage of the goods. No carrier will undertake such a risk and responsibility. We are of the view that the provisions of the Port Trust Act cannot be so construed as imposing an additional liability or obligation on the carrier which was not contemplated by the contract it had entered with the shipper. It is only the customs of or the statutory provisions applicable to the port of discharge that can be taken to be an implied condition of the contract between the shipper and the shipowner. Therefore, the provisions of the Port Trust Act cannot add to the liability of the steamer or its agents which was not contemplated by the shipper or the shipowner at the time of entering into the contract. Having regard to the functions and the obligations which a steamer has undertaken with the shipper under the contract, we cannot say that the steamer has undertaken the responsibility for the safety of the goods till the goods are cleared by the Customs and taken delivery of by the consignee. As earlier referred to, the duty of the steamer is normally to deliver the goods to the consignee on the quay side but that place of delivery has been shifted by the provisions of the Port Trust Act to the warehouse where the Port Trust had stored the goods."[8]

57. The High Court then distinguished **Rowther-I** (supra) as follows:

> "But as already stated, the charges in that case related to the services rendered by the Port Trust at the time of the landing of the goods and their removal thereafter to its custody, and those charges were taken to be for the benefit of the steamer. It is for this reason that the Court took the view that the Port Trust is entitled to collect the service

[8] Page 286-287.

> charges from the steamer or its agent. We are, however, satisfied that the above decision cannot be taken to lay down that the Port Trust can at no time proceed against the consignee for demurrage charges and can only look to the steamer agent. We are, here, concerned with the demurrage charges after the goods have been landed and taken charge of by the Board and after the steamer agent had endorsed the bill of lading or issued a delivery order for effecting delivery to the consignee that is after the property in the goods had passed to him. As already stated, the goods have remained in the custody of the Port Trust on the default of the consignee to satisfy the Customs authorities that the import was authorised. "Even though the consignee is not a party to the contract of carriage once the property in the goods had passed to him, he becomes liable to pay the storage or demurrage charges as owner of the goods to the shipowner."[9]

58. **Rowther-II** (supra) has made it clear that **Rowther-I** (supra) concerned itself with Port Trust dues at the time of landing of the goods, and their removal thereafter to custody of the Port Trust. These were charges wholly distinct from demurrage charges, which are incurred only after the goods have been landed and have been taken charge of by the Board. To the extent that the High Court lays this down as a proposition of law, there can be no exception. However, it goes on to state that when the steamer agent endorses the bill of lading or issues a delivery order for effecting delivery to the consignee, it is at this stage that the property in the goods passes to the consignee. This part of **Rowther-II** (supra) is clearly contrary to **Rowther-I** (supra), which had stated:

[9] Page 287.

> "In the present case, it was further contended that as between the master of the ship and the consignee, the Act made it obligatory that the consignee gets his goods from the Board and not direct from the master of the ship, and that therefore the Board acts as the agent of the consignee. We have not been referred to any provision in the Act which supports this contention. Assuming, however, that the consignee cannot take delivery of the goods at the quay from the ship direct, it does not follow that the Board receives the goods as the agent of the consignee. The only reasonable conclusion in the circumstances can be that the place of delivery is shifted from the side of the ship to the warehouses where the Board stores the goods till the consignee appears to take delivery on the basis of the delivery order by the steamer agent which is usually an endorsement on the bill of lading, and the quay be considered a part of the ship."[10]

59. **Rowther-I** (supra) clearly lays down that the endorsement of the bill of lading by a steamer agent is for the purpose of *delivery* of the goods, and, accordingly, cannot be for the transfer of title to the goods. **Rowther-II** (supra) cannot, therefore, be said to be good in law when it speaks of endorsement on the bill of lading and issuance of delivery order by the steamer agent passing title of the goods to the consignee. Once this is made clear, the ratio of **Rowther-II** (supra) is to be understood thus: since charges for storage or demurrage are after goods are removed and placed in the custody of the Board, the steamer agent cannot be made to pay the same, as it would impose "a too onerous and unexpected responsibility on the steamer", which is only a carrier, and not owner, of the goods.

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[10] Page 946.

60. At this juncture, it is important to understand the legal effect of a bill of lading. This has been set out by a five Judge Bench of this Court in **J.V. Gokal and Co. (Pvt.) Ltd. v. Asst. Collector of Sales-Tax (Inspection) and Ors.** (1960) 2 SCR 852, as follows:

> "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. The legal effect of the transfer of a bill of lading has been enunciated by Bowen, L.J., in *Sanders Brothers* v. *Maclean & Co.* [(1883) II QBD 327] thus at p. 341:
>
> "The law as to the indorsement 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 recognised as its symbol, and the indorsement and delivery of the bill of lading operates as a symbolical delivery of cargo. Property in the goods passes by such indorsement 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 completing the title of the indorsee to full possession thereof, the bill of lading, until complete delivery of the cargo has been made on shore to someone 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."[11]

61. Section 1 of the Indian Bills of Lading Act, 1856 is also important, which states:

> "**Rights under bills of lading to vest in consignee or endorsee.—**Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself."

62. Under this section, the "endorsement" referred to is the endorsement made by the consignor or owner of the goods in favour of such endorsee on the bill of lading, so that title to property is then transferred to the endorsee. This endorsement is very far removed, as has been correctly stated in **Rowther-I** (supra), from the endorsement on the bill of lading by a steamer agent indicating that the goods have been delivered. Therefore, shorn of the confusion that has arisen as a result of mixing-up the two types of endorsement, the ratio of **Rowther-II** (supra) that, after goods are taken charge of by the Port Trust and stored in its premises incurring demurrage charges thereon, the vessel or its agent cannot be made responsible, is unexceptionable.

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[11] Page 861-862.

63. After extracting passages of the judgment of the High Court, this Court in **Rowther-II** (supra) then went on to extract a passage from **International Airport Authority of India v. Grand Slam International** (1995) 3 SCC 151, by which it was made clear that demurrage charges are to be paid by the importer or consignee liable for the same (and not the vessel or the steamer agent thereof).

64. **Sriyanesh Knitters** (supra) is the next judgment that has to be dealt with in chronological sequence. This was a judgment of two learned judges of this Court, in which the question that arose before the Court was stated thus:

> "**1.** The common question involved in these appeals is whether the appellant Board of Trustees of the Port Trust constituted under the Major Port Trusts Act, 1963 (for short "the MPT Act") have a general lien for their dues over the present or future consignments imported by the importers at the Bombay Port when the said dues are in respect of the past imports made by the said importers."

65. The Court first found that a reading of sections 59 and 61(1) of the MPT Act made it clear that the lien spoken of is a lien qua the particular goods that are imported, and cannot extend to previous imports of similar goods made by the same party. The Court then went on to hold that the MPT Act is not a comprehensive code, and has to be read together with other Acts wherever the MPT Act is silent. It was then held that section 171 of the Indian Contract Act, 1872 speaks of a general lien which may be exercised by the Port Trust as it is a

"wharfinger" within the meaning of said section. This being so, the Port Trust may continue to retain the goods bailed as security for past dues, but would have to have recourse to proceedings in accordance with law for securing an order, which would then enable the Port Trust to sell the goods to realise the amounts due to it. This could be done by filing a suit for recovery of the amount due to it under section 131 of the MPT Act.

66. However, the judgment goes on to make certain observations, in particular in paragraph 23, stating that a relationship of bailor and bailee comes into existence, when the Board is required to store goods that have been imported, between the Board and the consignee of those goods. Apart from the fact that this is directly contrary to **Rowther-I** (see page 940), the consignee cannot be considered to be a bailor if the definition of bailor under the Indian Contract Act, 1872 is read. Under section 148 of the Contract Act, a bailor is defined as a person who delivers the goods to the bailee. In this case, the person who delivers the goods to the bailee is the vessel and not the consignee, as has been correctly stated in **Rowther-I** (supra). Therefore, the observations that the consignee is the bailor of the goods, with the Port Trust being the bailee thereof, made in paragraphs 23 and 25 of **Sriyanesh Knitters** (supra) cannot be said to state the

law correctly, and are accordingly overruled. However, since we are not going into the point of sub-bailment as argued by Shri Pratap, we leave open the question as to whether the Port Trust, as sub-bailee, is entitled to recover its dues from the original bailor – the consignor, and persons claiming through it, given the statutory scheme of the MPT Act.

67. However, **Rowther-I** (supra) was correctly distinguished by the Court in **Sriyanesh Knitters** (supra) in paragraph 24 thereof, and its ratio qua the MPT Act not being an exhaustive code has our concurrence.

68. In **Forbes-I** (supra), two learned Judges of this Court doubted the correctness of **Rowther-II** (supra) and framed three questions (referred to earlier in this judgment) to be answered by a larger Bench. On 13.08.2014, the larger Bench of three Judges held:

> "We have gone through the order whereby the matter has been referred to this Bench. We have noted the fact that no reason for not agreeing with the Judgment delivered by a three-Judge Bench has been assigned in the said order. Moreover, upon going through the Judgment delivered in 1997 (10) SCC 285, we see no reason to disagree with the ratio laid down in the said Judgment. In these circumstances, we refer the matter back to the regular bench for further hearing as we do not see any inconsistency in the said Judgment."

69. The matter then came back to a Bench of two Hon'ble Judges of this Court, which delivered the judgment in **Forbes-II** (supra). In **Forbes-II**, the Court set out the question of law that arose before it as follows:

> "**1**…The common question of law that arises in these appeals, though in different facts and circumstances, is with regard to the liability of the agent of a shipowner (hereinafter referred to as the "steamer agent") to pay demurrage and port charges to the Board of Trustees of a Port (hereinafter referred to as "the Port Trust Authority") in respect of goods brought into the port and warehoused by the said authority. Before proceeding to answer the aforesaid question it will be convenient to take note of the core facts in each of the appeals under consideration."

70. Agreeing with the High Courts of Bombay and Calcutta that the steamer agent cannot be made liable for demurrage, the Court went on to hold:

> "**10.** While it is correct that the liability to pay demurrage charges and port rent is statutory, in the absence of any specific bar under the statute, such liability can reasonably fall on a steamer agent if on a construction of the provisions of the Act such a conclusion can be reached. Determination of the aforesaid question really does not hinge on the meaning of the expression "owner" as appearing in Section 2(*o*) of the 1963 Act, as has been sought to be urged on behalf of the appellant though going by the language of Section 2(*o*) and the other provisions of the Act especially Section 42, an owner would include a shipowner or his agent. Otherwise it is difficult to reconcile how custody of the goods for the purpose of rendering services under Section 42 can be entrusted to the Port Trust Authority by the owner as provided therein under Section 42(2). At that stage the goods may still be in the custody of the shipowner under a separate bailment with the shipper or the consignor, as may be. Even dehors the above question the liability to pay demurrage charges and port rent would accrue to the account of the steamer agent if a contract of bailment between the steamer agent and the Port Trust Authority can be held to come into existence under Section 42(2) read with Section 43(1)(*ii*) of the 1963 Act.
>
> **11.** For the reasons already indicated the decision in *Sriyanesh Knitters* with regard to existence of a

relationship of bailor and bailee between the consignee and the Port Trust Authority instead of the steamer agent and the Port Trust Authority cannot be understood to be a restatement of a general principle of law but a mere conclusion reached in the facts of the case where the consignee had already appeared in the scene. In all other situations where the bill of lading has not been endorsed or delivery orders have not been issued and therefore the consignee is yet to surface, the following observations of the Constitution Bench in *K.P.V. Sheik Mohamed Rowther & Co.* [*Port of Madras* v. *K.P.V. Sheik Mohamed Rowther & Co.*, 1963 Supp (2) SCR 915] will have to prevail: (SCR p. 940)

"Section 40 speaks of the responsibility of the Board for the loss, destruction or deterioration of the goods of which it has taken charge as a bailee under Sections 151, 152 and 161 of the Contract Act, 1872. Section 148 of the Contract Act states that a bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the bailor and the person to whom they are delivered is called the bailee. It is clear therefore that when the Board takes charge of the goods from the shipowner, the shipowner is the bailor and the Board is the bailee, and the Board's responsibility for the goods thereafter is that of a bailee. The Board does not get the goods from the consignee. It cannot be the bailee of the consignee. It can be the agent of the consignee only if so appointed, which is not alleged to be the case, and even if the Board be an agent, then its liability would be as an agent and not as a bailee. The provisions of Sections 39 and 40, therefore, further support the contention that the Board takes charge of the goods on behalf of the shipowner and not on behalf of the consignee, and whatever services it performs at the time of the landing of the goods or on their removal thereafter, are services rendered to the ship."

12. From the above, the position of law which appears to emerge is that once the bill of lading is endorsed or the delivery order is issued it is the consignee or endorsee who

would be liable to pay the demurrage charges and other dues of the Port Trust Authority. In all other situations the contract of bailment is one between the steamer agent (bailor) and the Port Trust Authority (bailee) giving rise to the liability of the steamer agent for such charges till such time that the bill of lading is endorsed or delivery order is issued by the steamer agent.

13. In the orders of the Calcutta High Court under challenge, it is mentioned that Section 60 of the Act provides a remedy to the steamer agent to recover the dues from the consignee. Section 60 of the 1963 Act confers a limited lien on the shipowner "for freight and other charges payable to the shipowner" which expression does not extend to demurrage and other port charges. The High Court, therefore, does not appear to be correct in its conclusions. However, the said error would not be fundamental to the final conclusion reached by the High Court. In this regard we cannot help noticing the special provisions of Sections 61 and 62 of the Act which enable the Port Trust Authority to proceed against the goods within its custody to recover the charges which may be payable to the Port Trust Authority. Ordinarily and in the normal course if resort is made to the enabling provisions in the 1963 Act to proceed against the goods for recovery of the charges payable to the Port Trust Authority there may not be any occasion for the said authority to sustain any loss or even suffer any shortfall of the dues payable to it so as to initiate recovery proceedings against the shipowners."

71. Paragraph 10 of the judgment does hold that the language of section 2(o) read with other provisions of the MPT Act, especially section 42, would include a ship-owner or his agent. We have already pointed out that the principle of *noscitur a sociis* cannot be applied to this definition clause, both on its plain language, as also the fact that it is an inclusive definition clause, which shows that this statement of the law is correct. However, the statement in this paragraph that even *de hors* the above

question, the liability to pay demurrage charges and port rent would accrue to the account of the steamer agent because of the statutory bailment that comes into existence under section 42(2) read with section 43(1)(ii), is plainly incorrect, in view of our finding that after the Port Trust takes charge of the goods and issues a receipt therefor (at which point of time the statutory bailment comes into force), the vessel or the steamer agent cannot be held liable.

72. Insofar as paragraph 11 is concerned, we have already made it clear that **Sriyanesh Knitters** (supra) cannot be said to reflect the correct position in law, insofar as a bailment between the consignee and the Port Trust is concerned, and thus **Sriyanesh Knitters** (supra) has been overruled by us to this extent.

73. Paragraph 12 of the said judgment contains the same confusion that is contained in **Rowther-II** (supra), and cannot therefore be said to lay down the law correctly. The correct position in law is, as has been stated hereinabove, that *after* the Port Trust takes charge of the goods, and issues a receipt therefor, and thereafter stores the goods in a place belonging to it, such storage charge cannot be to the account of the vessel or an agent of the vessel.

74. Paragraph 13 refers to one other aspect of the case that has been argued before us. It may be recalled that the impugned judgment of

the Kerala High Court in the present case had held that the word “may” occurring in sections 61 and 62 of the MPT Act must be read as “shall”. This is not the correct position in law, as a discretion is vested in the Board to sell the goods in the circumstances mentioned in sections 61 and 62. However, such discretion cannot be exercised arbitrarily, as the Board is “State” within the meaning of Article 12 of the Constitution, and is therefore bound by the constraints of Article 14 of the Constitution of India (see **Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay** (1989) 3 SCC 293 at paragraph 22). Therefore while it may not be correct to say that “may” has to be read as “shall” in sections 61 and 62 of the MPT Act, yet in all future cases the Board is under a constitutional duty to sell the goods in its custody within a reasonable time from which it takes custody of those goods. Ordinarily, the time of four months from the date of landing of the goods mentioned in section 63(1)(c) of the MPT Act should be the outer-limit within which such goods should be put up for sale. If not put up for sale within such time, the Board must explain as to why, in its opinion, this could not be done, which explanation can then be tested by the Courts. If the explanation is found to be reasonable, and the owner or person entitled to the goods does not remove the goods thereafter, penal demurrage may then be levied and collected by the Board. To this

extent, therefore, while overruling the impugned judgment of the Kerala High Court on the aspect of “may” being read as “shall” in sections 61 and 62 of the MPT Act, yet the hovering omnipresence of Article 14 over the Board must always be given effect to, and there must be a very good reason to continue detention of goods beyond the period of four months as mentioned hereinabove before they are sold.

75. We now come to a judgment of two honourable Judges of this Court in **Rasiklal** (supra). The question that arose in this case was as to whether the Appellant ‘Rasiklal Kantilal and Company’, who was a person interested in purchasing goods, and did not at the time have title to the goods, would be liable to pay demurrage charges for a period of roughly six months, which began with the date on which he applied to the customs authorities to have bills of entries substituted in his name. On the facts in that case, during the period from November, 1991 to January, 1992, 78 shipments of goods were imported by 5 different consignees from a UK company, one M/s Metal Distributors (UK) Ltd; these consignments were landed at Bombay Port. The consignees filed bills of entry for 37 out of 78 consignments, but subsequently failed to lift the consignments, as a result of which they came to be stored at the Port of Bombay. The consignments were shipped on a “CAD basis”, i.e. cash against documents, in which title

would remain with the UK company till such time that an importer would retire the documents against payment.

76. This Court held that despite Rasiklal not being an owner of the goods, he was liable to pay demurrage for the aforesaid period. Strictly speaking, this judgment does not apply to the facts of the cases before us, in that Rasiklal was neither the owner of a vessel or its agent. It was an importer of goods who had beneficial title to the said goods, as a formal agreement between the UK company and Rasiklal to purchase the said goods was made in April, 1992. Given our reading of the MPT Act, and section 63(2) in particular, this judgment could have been supported on the basis that Rasiklal was an importer (within the meaning of section 63(2)) of the goods, and as beneficial owner of the goods would therefore be liable to pay storage charges of the aforesaid goods. However, this Court did not choose this route in order to arrive at its conclusion. On the other hand, it went on to consider **Rowther-I** (supra), **Rowther-II** (supra), and **Forbes-II** (supra), and arrived at the following conclusion in paragraph 47:

> "**47.** With respect, we agree with the conclusions recorded by this Court in *Rowther-2* and *Forbes* that a Board could recover the *rates* due, either from the steamer agent or the consignee but we are of the humble opinion that enquiry into the question as to when the property in the goods passes to the consignee is not relevant."

77. The Court then went on to examine various provisions with regard to bailment, and stated that passing of title in goods is irrelevant conceptually to bailment, which concerns itself with delivery and not title of goods. It then framed the question in paragraph 51, thus:

> *"The only question is: from whom can the board recover – we emphasise the question is not who is liable."*

78. From paragraphs 52 to 60, the Court then went on to consider the observations made in **Rowther-I** (supra) that the first respondent, i.e. the Port Trust, is a sub-bailee of the goods bailed by the consignor to the ship-owner. This being so, it is the consignor to whom the Port Trust has to look for payment of these charges, and since in this case Rasiklal is a consignee claiming *through* the consignor, Rasiklal would be liable. Section 158 of the Indian Contract Act, 1872 and section 1 of the Indian Bills of Lading Act, 1856 were relied upon to reach this conclusion.

79. First and foremost, **Rowther-I** (supra) did hold that the Port Trust is a sub-bailee of goods bailed by the consignor to the ship-owner, but so held in order to distinguish an English judgment – as has been pointed out hereinabove – which would then lead to the proposition that once the goods are placed in the charge of the Board, it would amount to delivery to the consignee, which proposition was turned down by the Court. The question whether section 158 of the Contract Act can apply

to a statutory bailment under the MPT Act is left open, given that the Port Trust is not limited only to recovering "necessary expenses" to be payable by the bailor, but is statutorily is entitled to recover, by way of levy of rates and expenses incurred for storage of the goods, together with something more – the something more being rates of storage higher than warehousing rates as a deterrent against keeping these goods in the Port Trust premises. This Court in **Board of Trustees of the Port of Bombay v. Jai Hind Oil Mills Co. and Ors.** (1987) 1 SCC 648 has observed:

> "**10.** The power of a Port Trust to fix rates of demurrage and to recover the same from an importer or exporter (although the question of an exporter paying demurrage arises rarely) under law and to show concession as regards demurrage charges in certain specified cases is recognised by this Court in the *Trustees of the Port of Madras* v. *Aminchand Pyarelal* [(1976) 3 SCC 167] and in the *Board of Trustees of the Port of Bombay* v. *Indian Goods Supplying Co.* [(1977) 2 SCC 649]. These decisions are no doubt based on the relevant laws which were in force at the material time. But the decisions are still relevant insofar as cases arising under the Act because the Act also contains provisions more or less similar to the statutory provisions considered in the said decisions. Demurrage charges are levied in order to ensure quick clearance of the cargo from the harbour. They are always fixed in such a way that they would make it unprofitable for importers to use the port premises as a warehouse. It is necessary to do so because congestion in the ports affects the free movement of ships and the loading and unloading operations. As stated earlier, the Port Trust shows concession to the party concerned in certain types of cases."

80. As a matter of fact, the Division Bench in **Rasiklal** (supra) seems to have put the cart before the horse, on a ground based in equity. The Court stated:

> "**60**…Denying such a right on the ground that the person claiming delivery of the goods acquired title to the goods only towards the end of the period of the bailment of the goods with the first respondent would result in driving the first respondent to recover the amount due to it from the bailor or his agent who may or may not be within the jurisdiction of the municipal courts of this country (by resorting to a cumbersome procedure of litigation). The first submission is, therefore, rejected."

81. As has been pointed out by us, no such right has been denied on a correct reading of the MPT Act. The importer, the consignee and the consignor, or their agents, can all be held liable to pay demurrage charges. However, since **Rasiklal** (supra) does not involve either the owner of the vessel or its agent, we leave open the question as to whether the Port Trust, as sub-bailee, is entitled to recover its dues from the original bailor – the consignor, and persons claiming through it, given the statutory scheme of the MPT Act, as has already been indicated in paragraph 66 above.

82. Based on the above discussion, our answers to the questions framed in the reference order are as follows:

1. The point of time at which title to the goods passes to the consignee is not relevant to determine the liability of the

consignee or steamer agent in respect of charges to be paid to the Port Trust;

2. and 3. The bill of lading being endorsed by the steamer agent is different from the bill of lading being endorsed by the owner of the goods. In the first case, the endorsement leads to delivery; in the second case, the endorsement leads to passing of title. For the reasons mentioned in the judgment, both stages are irrelevant in determining who is to pay storage charges – we have held that upto the point that the Port Trust takes charge of the goods, and gives receipt therefor, the steamer agent may be held liable for Port Trust dues in connection with services rendered qua unloading of goods, but that thereafter, the importer, owner, consignee or their agent is liable to pay demurrage charges for storage of goods;

4. As per paragraph 24 of our judgment;

5. The answer to question number 5 is really in two parts: *first*, as to whether carrying goods in a container would make any difference to the position that only the owner of the goods or person entitled to the goods is liable to pay for demurrage; and *second*, as to whether the Port Trust is obliged to destuff containers that are entrusted to it and return empty containers

to the shipping agent. The answer to the first question is contained in paragraphs 45 to 51 of our judgment. The answer to the second question is that a container which has to be returned is only a receptacle by which goods that are imported into India are transported. Considering that the container may belong either to the consignor, shipping agent, ship-owner, or to some person who has leased out the same, it would be the duty of the Port Trust to destuff every container that is entrusted to it, and return destuffed containers to any such person within as short a period as is feasible in cases where the owner/person entitled to the goods does not come forward to take delivery of the goods and destuff such containers. What should be this period is to be determined on the facts of each case, given the activities of the port, the number of vessels which berth at it, together with the volume of goods that are imported. While it does not lie in the mouth of the Port Trust to state that it has no place in which to keep goods after they are destuffed – as in the facts in the present case – yet a court may, in the facts of an individual case, look into practical difficulties faced by the Port Trust. This may lead to the “short period” in the facts of a particular case being slightly longer

than in a case where a port is less frequented, and goods that are stored are lesser in number, given the amount of space in which the goods can be stored.

83. Having answered the questions that have been posed before this Court, we do not, on the facts of this case, think that the justice of the case demands that we should interfere with the impugned High Court judgment. The steamer agents themselves did not dispute liability to pay ground rent upto 75 days before the High Court, and have admittedly paid the said charges long ago. As a matter of fact, the steamer agents paid ground rent even beyond the period of 75 days – the High Court having ordered the Appellant Port Trust to recompute the liability of the steamer agents, and return the balance to the parties concerned within two months from the date of receipt of a copy of the impugned judgment. To order a refund of ground rent paid for 75 days to the steamer agent, and direct the Board to then recover the same from the importer, consignor and/or the owner of the goods at this late stage of the proceedings would not be in the interest of justice.

84. Accordingly, we dispose of the appeals that have been filed against the impugned High Court judgment. The impugned judgment is set aside on one question of law, namely, that the expression “may” in sections 61 and 62 of the MPT Act cannot be read as “shall”, subject

to the caveat that as the “State” under Article 12 of the Constitution, a Port Trust must act reasonably, and attempt to sell the goods within a reasonable period from the date on which it has assumed custody of them.

……..……J.
(R. F. Nariman)

……..……J.
(Navin Sinha)

……..……J.
(Indira Banerjee)

New Delhi.
5th August, 2020.