

Orissa HC exempts vessel from custom duty as notification cannot have retrospective application

In ***Great Eastern Shipping Company Ltd. and Anr. Vs. Union of India and Ors [WRIT PETITION (CIVIL) No.4 OF 2013 dated August 27, 2021]***, Great Eastern Shipping Company Ltd (**GESCO**) (“**the Petitioner**”) has filed the current writ petition seeking relief to provide a declaration that *Condition No. 82 of Sl. No.462 of Notification No .12/2012. dated March 17, 2012, (“Exemption Notification 2012”)* to the extent of making the import of vessel “*Jag Arnav*” retrospectively amenable to Customs Duty is violative of Sections 12, 25 and 46 of the Customs Act, 1962 and Articles 14, 19 (1) (g), 265 and 300A of the Constitution of India. Along with that, the Petitioner has sought a relief to provide a direction from the Assistant Commissioner, Central Excise, Customs & Service Tax, Balasore Division, Orissa (“**Respondent No. 3**”) and the Commissioner, Central Excise, Customs & Service Tax, Bhubaneswar-1 (“**Respondent No.4**”) not to deny the Petitioner, the permission to convert the vessel ‘Jag Arnav’ to ‘coastal status’ and further not charge any Customs Duty on the same.

The Petitioner’s imported vessels *namely; ‘Jag Arnav’, ‘Jag Ratan’ and ‘Jag Rani’* were exempted from the payment of custom duty when they were first called in Indian Port. The Petitioner’s contention relied on the fact that the *Exemption Notification 2012* which levied custom duty on imported vessels was passed after the import of their vessel and cannot have a retrospective application. Hence exempted the Petitioner from the payment of custom duty.

The Hon’ble Orissa High Court seconded the contentions of the Petitioner, while relying on landmark judgment of ***SEAMEC Limited v. Union of India [Writ Petition (L) No.2921 of 2011 dated January 11, 2021]***, and observed that the Petitioner is exempted from the payment of custom duty and the notification dated March 17, 2012 cannot be applied retrospectively.

Further relying on the case of ***Great Offshore Limited Vs. Commissioner of Customs (Import) [Writ Petition (LOD) No.104 of 2012 dated February 13, 2012]*** wherein it was held that where the vessels were imported before the coming of notification which has been applied in the current case, the Respondents could not have insisted on levy of customs duty at a later stage.

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