

HIGH COURT OF GUJARAT (D.B.)

**LARSEN AND TOUBRO LIMITED & 1 OTHER (S)
V/S
UNION OF INDIA & 2 OTHER(S)**

Date of Decision: 20 March 2019

Citation: 2019 LawSuit(Guj) 151

Hon'ble Judges: [Anant S Dave](#), [Biren Vaishnav](#)

Case Type: Special Civil Application; Civil Application (For Direction)

Case No: 6002 of 2016, 16211 of 2016, 16212 of 2016, 16213 of 2016, 16214 of 2016, 16215 of 2016, 16216 of 2016, 16217 of 2016, 16218 of 2016, 16219 of 2016, 16220 of 2016, 16221 of 2016, 16222 of 2016, 16223 of 2016, 16224 of 2016, 16225 of 2016, 16226 of 2016, 16227 of 2016; 1 of 2018

Subject: Customs

Head Note:

Customs Act, 1962, Sections 61, 28, 69, 58, 72, 67 and 65-Finance Act, 2016, Section 61-Ware house goods-Keeping thereof-Beyond statutory period-Within bound of ware house-Effect-Held-When in relation to such warehoused goods, the process of manufacturing is undertaken with the sanction under Section 65 of the Customs Act, 1962, it cannot be said that the warehoused goods have remained in the warehouse in breach of Section 61(2)(ii) of the Customs Act because the warehousing period of such goods is not extended bona fide as the distinction between such goods as warehoused goods gets obliterated once they are issued for manufacturing-Merely because they remain within the bounds of the warehouse as part of the manufacturing cycle, non-extension of license of such goods as warehoused goods and the breach of Section 61(2)(ii) shall not be attracted as such goods then are goods subsumed in the manufacturing process

under Section 65 of the Customs Act, 1962-Petition allowed.

Acts Referred:

[Customs Act, 1962 Sec 72\(1\), Sec 61, Sec 28, Sec 69, Sec 65\(1\), Sec 58, Sec 61\(2\)\(ii\), Sec 61\(2\), Sec 72, Sec 72\(1\)\(b\), Sec 67, Sec 2\(44\), Sec 65](#)
[Finance Act, 2016 Sec 61, Sec 61\(1\)\(b\)](#)

Final Decision: Petition allowed

Advocates: [Mihir Joshi](#), [Kunal Nanavati](#), [Ankit Shah](#), [Nikhil Kariel](#)

Reference Cases:

[Cases Referred in \(+\): 2](#)

Judgement Text:-

Biren Vaishnav, J

[1] In all these petitions filed, challenge is to the Orders-in Original passed by the competent authorities under the Customs Act, 1962. The Orders-In-Original have been passed pursuant to demand notices issued under Section 72(1) read with Section 61(2) of the Customs Act, 1962. Challenging the legality and validity of the impugned demand notice F. No. V(Ch-84)30264/Div-IV/12-13 dated 18.04.2013 and the Order-in-Original No. SRT-II/Div-II/04/ADJ./15-16 dated 18.02.2016 passed by the respondent no. 3, the petitioners have preferred the present petitions.

[2] Since all the petitions have been listed and heard together, for the sake of convenience, facts of Special Civil Application No. 6002 of 2016 are being recorded for the purposes of this judgement. In order to appreciate the factual and legal controversy, it shall be necessary to state the undisputed facts as given out in the petition:

2.1 The petitioner no. 1, is an existing company within the meaning of Companies Act, 1956 and has one of its manufacturing facilities at Survey No. 230/P & 231, Hazira Manufacturing Complex (W), Surat where they are engaged, inter alia, in the manufacture and supply of Oil Exploration Platforms and related machineries and also in Ship Building activities. On its application, the company has been granted license for Private Bonded

Warehouse bearing License No. 1/1986 dated 31.03.1986, with a validity upto 01.04.1987 for storage of Steel Plates, Sheets, Rods, Structurals, Component etc without payment of duty on import, subject to prescribed conditions as prescribed. The warehouse is situated at Survey No. 230/P and 231, Hazira Manufacturing Complex (W) Hazira Road, Village Mora, P.O. Bhatha, Surat 394510. The said license has been renewed from time to time on the petitioner company's request by respondent no. 3 on seeking approval of respondent no. 2. The said license was still valid till 31.12.2016.

2.2 Consequent to grant of warehousing license under Section 58 of the Customs Act, 1962, the petitioner company also obtained permission to manufacture ships under section 65 of the Customs Act, 1962 vide F.No. VIII/4034/CUS/96/PT-II, dated 07.06.2006. Under such permissions obtained and which have been renewed from time to time, the petitioner company has imported several consignment of goods and deposited the said in the imported warehouse and also carried out manufacturing processes and operations in relation to the warehoused goods.

2.3 Vide letter F.No. R-III/D-IV/warehouse-SCN/12-13 dated 16.04.2012, the petitioner was required to furnish details of past years regarding goods deposited in the bonded warehouse. According to the letter, the goods deposited in the warehouse remained in such private bonded warehouse after expiry of one year even if the bonded goods are issued for manufacturing. The letter further elicited information whether such goods still remained in the bonded warehouse till the resultant goods are cleared either for home consumption or export.

2.4 Vide letter dated 25.05.2012 bearing No. F.No. R-III/D-IV/Misc.2011-12, the Jurisdictional Range Superintendent had sought certain clarification from the petitioners with respect to their goods stored in warehouse and issued for manufacturing operations. By such letter, the respondent asked the petitioner to clarify (a) Whether the petitioner had obtained permission for warehouse under Section 58 of the Customs Act? (b) Whether the goods warehoused under Section 65 remained in the warehouse for more than a year? (c) Whether the manufacturing was done within the bonded

warehouse and such goods were used and cleared within one year and if not so, if extension for warehousing period was taken. The petitioner company vide a letter dated 22.02.2013 provided details of all imported consignments which were warehoused in their bonded warehouse from the period 31.03.1986 to 03.12.2012. It appears that, based on such information, the respondents prepared a link of goods imported, warehoused and used in manufacturing in warehouse under bond and cleared from warehouse after expiry of one year from date of receipt in such warehouse. The petitioner replied to the said letter vide communication dated 28.06.2013 No. HZMC/HED/SHBD/INBOND/65/KVU stating that goods stored in warehouse under Section 58 of the Act were duly issued immediately for manufacturing activity under Section 65 of the Act by Customs Officer as per the prescribed conditions and therefore extension of warehousing period for the subject goods was never applied for. The petitioners further clarified the issue and reiterated their position vide letter no. HZMC/SHBD/IN Bond/KVU dated 06.03.2013.

2.5 On 18.04.2013, the petitioner company was issued the impugned notice F. No. V(Ch-84)30264/Div-IV/12-13 dated 18.04.2013 by respondent no. 3 demanding customs duty of Rs.330,92,81,470/- under section 72(1) of the Act where the resultant manufactured goods were not being cleared for home consumption or export within one year, as improperly removed. Further interest purportedly payable under Section 61(2) of the Act was demanded.

2.6 In order to substantiate the fact that goods were cleared immediately for manufacturing under Section 65 of the Act and goods were assessed at Zero Duty, the petitioner requested respondent no. 3 to share the copies of Bond Registers for the disputed period. The respondent no. 3 vide letter no. F. No. V(Ch-84)30264/Div-IV/12-13 dated 25.01.2016 informed that Bonded Warehouse Register is maintained by Jurisdictional Range Officer and should be obtained from there. The petitioner requested the Jurisdictional Range Officer accordingly. However, it is the case of the petitioners that since the Jurisdictional Superintendent had informed that desired records would be shared within 07-10 days, the petitioners requested respondent no. 3 to adjourn personal hearings on 08.02.2016. Thereafter, on 18.02.2016

also similar request for adjournment of personal hearing was made by the petitioner company citing the reason that all the desired records of Bond Registers had not been shared by Jurisdictional Superintendent.

2.7 However, on 18.02.2016 Order-in-Original No. SRT-II/Div-II/04/ADJ./15-16 was passed ex-parte by respondent no. 3 confirming demand to the extent of Rs.330,92,81,470/- as Customs Duty on goods which were used in manufacturing under Section 65 but resultant manufactured product being cleared after one year in terms of Section 72(1) of the Act and Rs.2,02,69,93,433/- as interest in terms of Section 61(2)(ii) of the Act on goods which were used in manufacturing under Section 65 but resultant manufactured product being cleared after 90 days but within one year. The said notice as well as order-in-original are challenged in the present petition.

[3] We have heard Mr. Mihir Joshi, learned Senior Counsel appearing with Mr. Kunal Nanavati, learned advocate for the petitioners in Special Civil Application No. 6002 of 2016, Mr. Nikhil Kariel, learned advocate appearing for the petitioner in Special Civil Applications No. 16211 to 16227 of 2016 as well as learned Assistant Government Pleader and learned ASG Mr Ankit Shah for the respondents in detail in respect of the controversy involved in the petitions and have also gone through the various affidavits and written submissions.

3.1 Mr. Mihir Joshi, learned Senior Counsel appearing for the petitioners in Special Civil Application No. 6002 of 2016 has submitted that the Government of India has issued various notifications under the Act since 1986 exempting the raw material and parts used for manufacturing of goods supplied in connection with purposes of Offshore Oil Exploration/exploitation and ships from customs duty. These exemptions are subject to the condition that manufacturing of platforms and ships be done in accordance with Section 65 of the Act. According to the petitioner, in order to manufacture Oil Exploration Platform and related machineries, the petitioner had applied for Private Bonded Warehouse License under Section 58 of the Customs Act, 1962 and permission of manufacturing under Section 65 of the Customs Act, 1962. He has drawn our attention to the notification last in the series of such exemption which is 12/2012-Cus dated 17.03.2012 (Sr. No. 357 for Oil

Exploration Machinery and Sr. No. 469 for Ships which is reproduced hereinbelow and submitted that the impugned goods are exempted from levy of customs duty by very exemption notification dated 17.03.2012.

NOTIFICATION NO 12/2012 Customs, Dated : March 17, 2012 G.S.R. (E).- In exercise of the powers conferred by subsection (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2002-Customs, dated the 1st March, 2002 Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 118(E) dated the 1st March, 2002, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India,- (a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table; (b) from so much of the additional duty leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act 1975 (51 of 1975) as is in excess of the additional duty rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said Table: S. No. Chapter or Heading or sub heading or tariff Description of goods Standard rate Additional duty rate Condit ion No. Page 9 of 49 C/SCA/6002/2016 CAV JUDGMENT item 357 84 or any other Chapter Parts and raw materials for manufacture of goods to be supplied in connection with the purposes of off-shore oil exploration or exploitation Nil Nil 42 469 Any Chapter Raw materials and parts, for use in the manufacture of goods falling under heading 8901,8902,8904,8905(exce pt sub-heading 890520) or 8906, in accordance with the provisions of section 65 of the Customs Act, 1962(52 of 1962) Nil Nil 83 ANNEXURE Condition No. Conditions 42 If,- (a) the parts and raw materials are used in the manufacture of goods in accordance with the provisions of section 65 of the Customs Act, 1962 (52 of 1962); and (b) a certificate is produced in each case to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, from a duly authorized officer of the Assistant Commissioner of Customs, as the case may be, from a duly authorized officer of the Directorate General of Hydrocarbons in the Ministry of Petroleum and Natural Gas, Government of India, to the effect that the goods are required for the purposes of off-shore oil exploration or exploitation. 83 If any of the goods manufactured from the imported raw materials and parts are subsequently intended to be broken up, a fresh bill of entry in respect of such manufactured goods shall be presented to the Commissioner of Customs and thereupon these goods shall be chargeable with the duty which would be payable as if such manufactured goods had been imported and entered for home consumption, under section 46 of the Customs Act, 1962 (52 of 1962), on the date of the presentation of such fresh bill of entry, for the purposes of break-up of such manufactured goods.

3.2 Drawing our attention to the language of the said notification, he submitted that the same clearly indicates that raw materials used for manufacture of goods in connection with the purpose of off-shore oil

exploration or exploitation are exempt from duty and such goods are accordingly assessed as nil rate of duty. He contended that the eligibility of the petitioner company under the exemption notification is never disputed or denied and therefore there is no question of seeking extension of warehousing period. Even otherwise, the license for Private Bonded Warehouse which was issued on 31.03.1986 for storage of steel plates, sheets, rods, structurals, components etc without payment of duty on import was renewed from time to time on the petitioner's request by respondent no. 3 on seeking approval of respondent no. 2. Similarly, permission was also granted for manufacturing Oil Exploration Platforms and Related Machineries under section 65 of the Customs Act, 1962 and such permissions have been renewed periodically. The respondents have never reported any non-compliance of conditions under section 65 of the Customs Act, 1962.

3.3 Mr. Joshi further pointed out that the permission granted by the respondent no. 3 prescribes detailed general conditions towards control and supervision of manufacturing operations along with comprehensive procedures to be followed for Warehousing, Manufacturing and Ex-Bond Operations. Under the specified conditions, the petitioner is permitted to remove to the workshop goods/raw materials for manufacture once a Customs Officer, at such removal issues a slip assigning serial number to "issue application". He has relied on a sample copy produced at Annexure E of the petition. It will be necessary to produce certain relevant conditions subject to which permission under Section 65 has been so granted. The conditions are therefore reproduced hereinbelow for the sake of convenience:

"Condition No. 11 :

Manufacturer will submit a monthly statement regarding the Receipts-Consumption-balance Bonded Goods. Besides, once in every six months stock taking of all bonded materials will be done. The Customs Officer under the supervision of the Superintendent shall physically verify and take an inventory of all the stock of the materials, stock in process and the finished

product. The statement shall be reconciled with the record accounts. Any discrepancies not accounted for by the licencees to the satisfaction of Asst. Collector of Customs will be liable to be charged with duty and fine and the licensee to penalise, as provided in the Act and Regulations.

Condition No. 15 :

The proper Customs Officer at the warehouse shall verify at the warehouse the imported/transferred bond/consignment and make entry in the warehouse register (proforma attached) and allow its deposit into the store-room. He shall ensure that the materials are stored bond-cum-itemwise and in such a manner as to allow easy and convenient access for check/inspection. The account will be kept separately for each different type/variety of the material. He shall also ensure, that proper stackcards (proforma attached) are displayed and maintained upto date with each different lot.

Condition No. 16 :

For materials required to be processed further before fitment to accessories/platforms/in bond, the manufacturer shall submit to the Customs Officer an 'Issue Application' (Proforma attached) in duplicate. Separate 'Issue Application' shall be made for withdrawals from different bonded consignments. The Customs Officer shall assign a serial No. yearwise e.g. 1/86, 2/86 etc. to the 'Issue Application', shall check/verify the description and quantity entered for withdrawal and permit removal of the goods to the workshop where processing is to be done under his supervision."

General Conditions:-

3. The manufacturer shall have the following customs staff for supervising the warehousing, withdrawal, manufacture & ex-bond operations etc:-

a) One Prev. Officer

The above staff is for a single day shift of 8 hours only. The cost of this establishment at the prescribed rates will be borne by the manufacturer. The manufacturer will provide suitable accommodation for the office of this establishment as also the other requirements e.g. Furniture, fittings, stationery etc. as may be necessary for them to carry on their official duties.

4. A) No operations, whether of warehousing, issue from and deposit into the storeroom, manufacture and ex-bond removal shall be conducted without the supervision of the proper customs officer.

b) No manufacture/repair operation with bonded material shall be conducted at place outside the area licensed under Section 58 of the Custom Act, 1962.

5. The store-room/open warehouse where imported materials, waste/refuse of the imported materials arising in the process of manufacture and the finished goods are deposited, shall have the double lock system, key of one of which shall be with the Preventive Inspector. The storeroom shall not be kept open except when the operations of deposit into or withdrawal from the same are being conducted.

7. No manufacturing process, other than the one mentioned in the letter of the sanction shall be conducted at any time, except with the prior written permission of the Assistant Commissioner of Customs & Central Excise.

12. Manufacturer will submit a monthly statement regarding the Receipts-Consumption-Balance of the bonded goods. Besides, once in every six months stock taking of all bonded stock will be done. The Customs officer under the supervision of the Superintendent shall physically verify and take an inventory of all the stock material, stock in process and the recorded accounts. Any discrepancy not accounted for by the licensees to the satisfaction of the Deputy/Assistant Commissioner of Customs & Central Excise will be liable to be charged with duty and fine and the licensee to be

penalised as provided in the Act and the Regulations.

15. The bonded material required for manufacture shall be taken over from the bonded w/h of Private Bonded Warehouse Licensee. The removal of the bonded material from the premises of the Bonded Warehouse Licensee and deposit of the same in the Bonded Warehouse of LARSEN & TOUBRO LIMITED at Hazira Works shall be done in terms of provisions of Section 67 of the Customs Act, 1962 and under the Customs supervision. On completion of the manufacturing job, the material received by LARSEN & TOUBRO LIMITED shall be duly accounted by them and wastage/ refuse to be cleared on payment of duty, as prescribed in earlier paras.

17. For materials required to be processed further before fitment to Ship Building activity under in bond, the manufacturer shall submit to the Customs Officer an 'Issue Application' (Proforma attached) in duplicate. Separate 'Issue Application' shall be made for withdrawals from different bonded consignments. The Customs Officer shall assign a serial No. (which would be yearwise) e.g. 1/06-07, 2/06-07 to the 'issue application', shall check/verify the description and quantity entered or withdrawal and permit removal of the goods to the workshop, where processing is to be done, under his supervision.

In the ex-bond columns of the warehouse register, instead of the usual particulars of the shipping bill etc, the particulars of the "issue application" shall be entered. On receipt of the materials after processing, the second part of the "issue application" shall be filled in and a fresh entry of receipt made in the warehouse Register giving particulars of the "issue application" instead of the usual "for B/E etc a cross reference with the original entry of the receipt in the bond register shall also be made. In case the manufacturer wants to take the processed goods straight away for fitment for the Ship Building activity being manufactured / repaired in bond, the same may be allowed. However, the receipt entry as indicated above and the ex-bond entry as indicated subsequently shall be made and the usual ex-bond papers shall also be filled and completed.

18. In case the process of manufacture for which the material is withdrawn from the storeroom is not completed by the end of the day, intimation to this effect will be given to the Bond Inspector who will arrange for proper supervision of the stock-inposition."

3.4 All bills of entry were duly assessed by the proper officer of customs throughout the period from 31.03.1986 to 03.12.2012 and no objection as regards extension of warehousing period was ever raised by the respondent department.

3.5 Relying on the sample copy of the bond register at page 69 of the petition, Mr. Joshi submitted that while issuing the goods for manufacturing under Section 65 of the Customs Act, the bond officer duly certifies the duty leviable as "Exempted" or "Nil".

3.6 Mr. Joshi has relied on Sections 61 and 65 of the Customs Act, 1962 reproduced herein below, and submitted that the petitioner company has duly complied with the provisions of Section 65 of the Act pertaining to manufacture in relation to goods in a warehouse. He submitted that as per Section 65 of the Act, manufacturing and other operations can be carried out in a warehouse subject to conditions and fees as may be prescribed and after obtaining sanction from the Assistant Deputy Commissioner. He submitted that the petitioner company has obtained relevant permissions under Section 65 of the Act for both oil exploration and ship building and is duly complying with the conditions as mentioned in the permissions including submission of monthly statements, periodical stock verification etc. It is further submitted that there have been various CAG audits of the warehousing and manufacturing operations of the petitioner since 1986, but till date, the petitioner company was never informed about such purported improper removal of goods, apart from the arbitrary demand notice. The relevant provisions of the Customs Act, 1962 read as under:

"61. Period for which goods may remain warehoused.-

(1) Any warehoused goods may be left in the warehouse in which they are deposited or in any warehouse to which they may be removed,-

(a) in the case of capital goods intended for use in any hundred per cent. export oriented undertaking, till the expiry of five years;

(aa) in the case of goods other than capital goods intended for use in any hundred per cent. export-oriented undertaking, till the expiry of three years; and]

(b) in the case of any other goods, till the expiry of one year, after the date on which the proper officer has made an order under section 60 permitting the deposit of the goods in a warehouse: Provided that-

[(i) in the case of any goods which are not likely to deteriorate, the period specified in clause (a) or clause (aa) or clause (b)] may, on sufficient cause being shown, be extended-

(A) in the case of such goods intended for use in any hundred per cent. export-oriented undertaking, by the Commissioner of Customs, for such period as he may deem fit; and

(B) in any other case, by the Commissioner of Customs, for a period not exceeding six months and by the Chief Commissioner of Customs for such further period as he may deem fit;]

(ii) in the case of any goods referred to in clause (b), if they are likely to deteriorate, the aforesaid period of one year may be reduced by the Commissioner of Customs to such shorter period as he may deem fit:

Provided further that when the licence for any private warehouse is cancelled, the owner of any goods warehoused therein shall, within seven days from the date on which notice of such cancellation is given or within

such extended period as the proper officer may allow, remove the goods from such warehouse to another warehouse or clear them for home consumption or exportation.

(2) Where any warehoused goods-

(i) specified in sub-clause (a) or sub-clause (aa) of sub-section (1), remain in a warehouse beyond the period specified in that sub-section by reason of extension of the aforesaid period or otherwise, interest at such rate as is specified in section 47 shall be payable, on the amount of duty payable at the time of clearance of the goods in accordance with the provisions of section 15 on the warehoused goods, for the period from the expiry of the said warehousing period till the date of payment of duty on the warehoused goods;

(ii) specified in sub-clause (b) of sub-section (1), remain in warehouse beyond a period of ninety days, interest shall be payable at such rate or rates not exceeding the rate specified in section 47, as may be fixed by the Board, on the amount of duty payable at the time of clearance of the goods in accordance with the provisions of section 15 on the warehoused goods, for the period from the expiry of the said 9[ninety days], till the date of payment of duty on the warehoused goods]:

Provided that the Board may, if it considers it necessary so to do in the public interest, by order and under circumstances of an exceptional nature, to be specified in such order, waive the whole or part of any interest payable under this section in respect of any warehoused goods:

Provided further that the Board may, if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette, specify the class of goods in respect of which no interest shall be charged under this section. Explanation.-For the purposes of this section, "hundred per cent. export- oriented undertaking" has the same meaning as in Explanation 2 to sub-section (1) of section 3 of the Central Excises and Salt Act, 1944 (1 of

1944)."

65. Manufacture and other operations in relation to goods in a warehouse.-

(1) With the sanction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs and subject to such conditions and on payment of such fees as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods.

(2) Where in the course of any operation permissible in relation to any warehoused goods under sub-section (1) there is any waste or refuse, the following provisions shall apply:-

(a) if the whole or any part of the goods resulting from such operations are exported, import duty shall be remitted on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods exported:

Provided that such waste or refuse is either destroyed or duty is paid on such waste or refuse as if it has been imported into India in that form;

(b) if the whole or any part of the goods resulting from such operations are cleared from the warehouse for home consumption, import duty shall be charged on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods cleared for home consumption.

3.7 Mr. Joshi submitted that the purpose and intent of Sections 61 and 65 are different and the same cannot be equated with each other. Goods intended to be used for manufacturing operations as laid down under the provisions of Section 65 of the Act are not at par with the goods imported and kept in warehouse for general storage purpose as laid down under the

provisions of Section 61 of the Act. It is submitted that the essence of Section 65 of the Act is that goods imported cannot be subjected to custom duties so long as it is established that they remained in the warehouse till they were used for specific manufacturing operations and therefore the bar of 1 year as applicable in case of goods kept in warehouse under Section 61 of the Act will not apply to such goods imported for the purpose of manufacturing in warehouse under Section 65 of the Act.

3.8 Mr. Joshi has drawn attention of the Court to the communication dated 28.06.2012 bearing No. HZMC/HED/SHBD/INBOND/65/KVU and submitted that since the goods stored in warehouse under Section 58 of the Act were duly issued immediately for manufacturing activity under Section 65 of the Act by Customs Officer as per the prescribed conditions, extension of warehousing period for the subject goods was never applied for. Reliance is placed on the said communication dated 28.06.2012 which reads as under:

" Date - 28th June, 2012 HZMC/HED/SHBD/INBOND/65/KVU The Superintendent of Excise Range III, Div-IV, Surat-I. Page 19 of 49 C/SCA/6002/2016 CAV JUDGMENT Dear Sir, Sub : Clarification regarding warehousing of bonded goods used in ship building Ref : Your office letter F.No. R.III/D-IV/Misc/2011- 12 Surat dt. 25.5.12 We refer the captioned subject and reference and would like to clarify as under. We have obtained permission for warehouse under section 58 of Customs Act, 1962 for the specified area within our ground plan. After the goods are imported for in-bond mfg under section 65 of Customs Act, 1962, they are issued immediately for further use in the intended manufacturing activity and the production cycle of ship mfg is very long. Manufacturing activity for ship is carried out in our shipyard and we have declared in the beginning that we will carry out the designated activity of section 65 for ship mfg activity in the said area. The goods issued for further mfg is used at a place where ship is manufactured. The goods issued for manufacturing ship is used regularly as per the production schedules. We have not asked for an extension for goods issued for mfg and not been cleared as final product within a year (because of long production cycle) as we firmly believe that the said extension is necessary for goods deposited in pct. Bonded warehouse u/s. 58 of Customs Act, 1962 and extension is not applicable to goods issued on issue slip for further intended manufacturing. We would kindly request to receive the same and acknowledge. ..."

3.9 Mr. Joshi submitted that the petitioner company further clarified the issue and reiterated their position vide letter no. HZMC/SHBD/IN Bond/KVU dated 06.03.2013 and submitted that it was precisely the case of the petitioners therein that they import material for in-bond manufacturing process mainly with the purpose to manufacture final product. The purpose is never to store the material in private bonded warehouse. The imported material is immediately issued for use in further manufacturing on the basis of approved

Issue Slip. Accordingly, the imported goods do not remain as Warehouse Goods and hence there cannot be any interest liability beyond 90 days for final products dispatched after one year.

3.10 Drawing further attention to the letter dated 08.03.2016 addressed by the Chief Commissioner of Customs, Vadodara to ABG Shipyard, Mr. Joshi submitted that the letter itself in unequivocal terms states that if goods are cleared from the warehouse for manufacture in-bond under issue slips within a prescribed period of 1 year, there was no need to exercise powers under Section 61 of the Act for extension of warehousing period.

3.11 Mr. Joshi submitted that the petitioner had obtained the permission under Section 65 of the Act for manufacturing the Oil Exploration Platforms & Ships within warehouse. The permissions specifically provide that the proper customs officer is in complete charge and control of the imported goods being stored in the warehouse. The permissions provide that the materials are stored bond-cum-item wise and in such a manner so as to allow easy and convenient access for check/inspection. The accounts are also kept separately for each different type/variety of material. In particulars of the Shipping Bill etc., the particulars of the issue application are entered. He further submitted that the petitioner had undertaken the manufacturing activities in accordance with the provisions of Section 65 of the Act as well as the Regulations. The petitioner had maintained the accounts in the prescribed format towards receipt of goods in the bonded warehouse and their subsequent issuance for manufacturing purpose. These accounts were duly endorsed by the proper officer while inwarding the goods in the bonded warehouse and subsequent issuance of such goods for manufacturing purpose.

3.12 Mr. Joshi further submitted that the respondents no. 2 and 3 have never reported any non-compliance of conditions of Section 65 of Customs Act, 1962 while renewing the said permissions till date. The clarification vide letter dated 25.05.2012 bearing No. F.No. R-III/D-IV/Misc.2011-12 was sought from the petitioners even when their entire warehousing and manufacturing operations under Sections 58 and 65 are under physical

control of the same customs/excise officer.

3.13 Relying on the further communication dated 09.03.2017 bearing No. F.No. 473/01/2017-LC, Mr. Joshi submitted that so far as the doubt/question as regards whether the filing of ex-bond Bill of Entry is also needed for removal/consumption of warehoused goods under Section 65 of the Customs Act, the issue now stands further clarified by virtue of the said communication issued by the CBEC which clearly indicates that a manufacturer under Section 65 does not require any bill of entry to be filed for inputs used for such manufacture since the same are subsumed in the final product. He submitted that the CBEC has clarified that a manufacturer under Section 65 of Customs Act, 1962 is required to maintain accounts of Inputs imported / procured as enjoyed under the Manufacture & Other Operations in Warehouse Regulations 1966 (MOOWR). Manufacturer under Section 65 does not require any Bill of Entry to be filed for the inputs used for such manufacture as the inputs are subsumed in the final product. The accounts maintained under MOOWR, 1966 provides for due accounting of the inputs. The said notification reads as under:

" F.No. 473/01/2017-LC Government of India Ministry of Finance Department of Revenue Central Board of Excise & Customs New Delhi, dated the 9th March, 2017 To, The Chief Commissioner of Central Excise, Customs and Service Tax Vadodara Zone 2 nd Floor, Central Excise Building, Race Course Circle, Vadodara Sir, Sub : Request for clarification w.r.t Circular 22/2016 Cus dt 31.05.2016-reg. Please refer to your letter No. F.No. VIII/8- 1/CCO/T/Cus/2017 dt 7.2.17 on the captioned subject. In this regard, it is clarified that a manufacturer operating under Section 65 of the Customs Act, 1962 is required to maintain accounts of inputs imported / procured as enjoined under the Manufacture & Other Operations in Warehouse Regulations 1966 (MOOWR). Manufacture under Section 65 does not require any Bill of Entry to be filed for the inputs used for such manufacture as the inputs are subsumed in the final product. The accounts maintained Page 23 of 49 C/SCA/6002/2016 CAV JUDGMENT under MOOWR, 1966 provides for due accountal of the inputs. ..." [Emphasis Supplied]

3.14 Concluding his submissions, Mr. Joshi submitted that the respondent authority did not have any authority under law to raise a belated demand. He submitted that the respondent authorities have raised a demand after 28 years for the period ranging from 1986-2012 which is beyond the statutory period of limitation as prescribed under Section 28 of the Act. He submitted that extended period of limitation is not invocable when the Department was having physical control over the factory of the petitioner company. He further

submitted that the impugned order in original has been passed without providing an opportunity of hearing to the petitioner company in violation of principles of natural justice and therefore the impugned order in original as well as the demand notice deserve to be quashed and set aside.

[4] Mr. Nikhil Kariel, learned advocate addressed us in Special Civil Applications No. 16211 to 16227 of 2016 for the petitioners. He has adopted the arguments of Mr. Joshi, learned Senior counsel and has additionally pointed out the following :

(I) The learned Adjudicating authority has gravely erred in not appreciating the apparent distinction between duty-free goods intended to be used for manufacturing purpose and goods imported and kept in a warehouse for general storage purposes.

(II) Impugned order in original does not take into account the fact that goods in question are raw materials which are exempted from the levy of Customs Duty by a specific exemption notification and the said goods at the initial point of import had been assessed at NIL rate of duty and hence there can be no case of recovery of duty on exempted goods. Moreover the impugned order in original neither disputes the eligibility of the exemption notification nor does it challenge the aspect of removal of the said goods from the bonded warehouse for Ex-Bond Manufacturing within the Bonded Area belonging to the petitioners nor the NIL rate of assessment granted at that stage.

(III) Under Section 58 of the Customs Act, an officer of the respondent department duly empowered is required to endorse all goods that are warehoused and subsequently any issuance of such warehoused goods towards the bonded manufacturing process also happens with the express permission of the said Officer. Thus it is at this stage baffling as to how the respondent department can allege that there is no evidence as to if the petitioner has used the raw materials for the intended purpose more so when any such use would have to be necessarily endorsed by the Officer-In-Charge of the Bonded premises.

(IV) The sole documentary evidence that can be produced to substantiate that the raw materials from the bonded warehouse have been indeed used in the manufacturing process is the Bond Register which is maintained and kept in the custody of the Officer-In-Charge of the Bonded Warehouse thus effectively the most crucial evidence to counter the stand of the learned Adjudicating Authority is with the subordinates of the learned Adjudicating Authority.

(V) It would be pertinent to mention herein that nearly all of the SCNs issued to the present petitioner were in relation to goods that had been imported between 2008 to 2009 and the said SCNs were issued only in the year 2011 to 2012. Thus, apparently a delay of approximately 4 years has been occasioned while issuing the said SCNs and this delay has not been sought to be clarified at any point in time by the respondents herein. It would be pertinent to point out herein that for goods that are effectively under the control of the respondent department while in the Bonded Warehouse, such delay is inexplicable as it cannot be claimed by the department that they were unaware of the timeline involved as the Bond Register which records the movement of the goods into and out of the Bonded Warehouse is always in the Custody of the respondent department. Thus, for this singular reason even the delay of 4 years would indicate error committed by the respondents herein.

[5] Mr. Ankit Shah, learned Standing Counsel for respondent authority has extensively relied on the text of the impugned order and the affidavit-in-reply and supported the impugned order. He has in particular drawn the attention of the Court to paragraphs no. 11 to 24 of the impugned Order-In-Original and submitted that the same having been passed after taking the relevant materials and law on the subject into consideration does not call for any interference by this Court. The relevant paragraphs are reproduced herein below for the sake of convenience:

"11. I have gone through the case record, defence submission and record of personal hearing and observe that M/s. Larsen & Toubro Ltd., is a registered company and is engaged in Ship Building activities and other various projects. They have been granted license for Private Bonded Warehouses bearing Licence No. 1/1986 dated 31.03.1986 (valid upto 01.04.1987) under

Section 58 of Customs Act, 1962 for storage of Steel Plates, Sheets, Rods, Structural, Component etc without payment of duty on import, subject to the conditions as prescribed. The said license has been renewed from time to time on request of M/s. L & T Ltd., by the Jurisdictional Assistant/Deputy Commissioner on approval by the Commissioner, Central Excise, Customs & Service Tax, Surat-I (now Surat II) and the said license is still valid till 31.12.2016. M/s. L & T Ltd. was also granted permission vide F.No. VIII/40-34/BWH/85 dated 31.03.1986 for manufacturing activities in warehouse under Section 65 of Customs Act, 1962.

12. I also notice that the License under Section 58 of Customs Act, 1962 was granted subject to the conditions specified therein and on execution of Bonds by M/s. L & T Ltd., as required under Section 59 *ibid*, binding themselves as-

a) to observe all the provisions of this Act and the rules and regulations in respect of such goods;

b) to pay on or before a date specified in a notice of demand all-duties, and interest, if any, payable under sub-section (2) of section 61;

c) to discharge all penalties incurred for violation of the provisions of this Act and the rules and regulations in respect of such goods.

13. I have gone through Section 61[1][b] of Customs Act, 1962, which provides maximum period of one year for which such goods may be allowed to be left in the warehouse. Further, the proviso (B) to the said Section provides that the warehousing period may be extended by the Commissioner of Customs for a period not exceeding six months and by the Chief Commissioner of Customs for such further period as he may deem fit.

14. Further Section 61[2] of Customs Act, 1962 provides as follows:

Where any warehoused Goods -

(i) Specified in sub-clause (a) or sub-clause (aa) of sub-section (1), remain in a warehouse beyond the period specified in that sub-section by reason of extension of the aforesaid period or otherwise, interest at such rate as is specified in section 47 shall be payable, on the amount of duty payable at the time of clearance of the goods in accordance with the provisions of section 15 on the warehoused goods, for the period from the expiry of the said warehousing period till the date of payment of duty on the warehoused goods;

(ii) Specified in sub-clause (b) of sub-section (1), remain in warehouse beyond a period of ninety days, interest shall be payable at such rate or rates not exceeding the rate specified in section 47, as may be fixed by the Board, on the amount of duty payable at the time of clearance of the goods in accordance with the provisions of section 15 on the warehoused goods, for the period from the expiry of the said ninety days, till the date of payment of duty on the warehoused goods;

15. I also observe that in case of warehoused goods intended to be used in any 100% Export Oriented Undertaking, interest is payable after expiry of the warehousing period specified in Section 61[1][a] or 61[1][aa]; whereas in case of all other goods such as in the present case, interest is payable if goods remain in warehouse beyond a period of 90 days.

16. I find that in case of the goods imported and so warehoused by M/s L & T Ltd., interest is payable by them;

(a) If goods remain in warehouse beyond a period of 90 days;

(b) At the rate fixed by the Government from time to time.

17. Further as per Section 65 of Customs Act, 1962 with the sanction of the

Assistant Commissioner of Customs or the Deputy Commissioner of Customs as the case may be and subject to such conditions and on payment of such fees as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operation in the warehouse in relation to such goods.

18. Section 72[1][b] of Customs Act, 1962 provides that where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under Section 61 of Customs Act, 1962 to remain in a warehouse, such warehoused goods are liable to be goods improperly removed from the warehouse and the proper officer may demand and the owner of such goods shall forthwith pay the full amount of duty chargeable on account of such goods together with all penalties, interest and other charges payable in respect of such goods and Section 72[2] of Customs Act, 1962 further provides that if any owner fails to pay any amount demanded under subsection (1), the proper officer may cause to be detained and sold, such sufficient portion of goods in the warehouse.

19. I observe from the demand notice that consequent to grant of warehousing license under Section 58 of Customs Act, 1962 and the permission for manufacture & other operations in the bonded warehouse under Section 65 of Customs Act, 1962, M/s. L&T Ltd. have imported several consignments of goods and deposited the said imported goods in their aforesaid private bonded warehouse and also carried on manufacturing processes & other operations in relation to the warehoused goods. Some of the consignments so imported and stored in warehouse were used in manufacturing in warehouse and were cleared from warehouse after expiry of one year. It is evident from the records that M/s. L & T Ltd. had never applied for extension of warehousing period, in respect of imported warehouse goods. I find that some of the consignments so imported and stored in warehouse were used in manufacture in warehouse and were cleared from warehouse after expiry of 90 days and before 1 year.

20. I also observe that M/s. L&T Ltd., from time to time have executed Bonds

in terms of Section 59 of Customs Act, 1962 binding themselves inter alia to pay all duties amount, interest payable under Section 61[2] of Customs Act, 1962 in respect of the warehoused goods.

21. Thus I find that M/s L&T Ltd., imported the goods and warehoused in warehouse licensed under Section 58 of Customs act, 1962 and left the goods so warehoused in the warehouse beyond the period of one year as specified in Section 61(1)(b) ibid and no permission has been obtained for extension of warehousing period in respect of such warehoused goods from the Commissioner of Customs or from the Chief Commissioner of Customs as the case may be as required under Clause (B) of proviso to sub-section (1) of Section 61 ibid. They have contravened the provision of Section 61[1] of Customs Act, 1962 as they failed to clear the warehoused goods within the period specified under the said Section ibid. In addition to the aforesaid finding I also observed that by virtue of aforesaid commission and omission they have also violated the several regulation of Customs (manufacturing and other operation in warehouse) regulation 1966 in addition to aforesaid rules and various Notification as applicable from time to time.

22. I further find that if law prescribes certain thing to do in certain manners only then it has to be done in the such prescribed manner only. I have noted that the Hon'ble Supreme Court in the case of [JK Housing Board and other V/s. Kunwar Sanjay Kishan Kaul and other](#), 2011 10 SCC 714, Hon'ble Apex Court in its para 32 observed that:

"32.----- It is settled law that when any statutory provision provides a particular manner for doing a particular act, the said thing or act must be done in accordance with the manner prescribed in the act-----"

further I have noticed that Hon'ble Apex Court in the matter of [state through P.S. \(Police Station\), Lodhi Colony, New Delhi Vs. Sanjeev Nanda](#), 2012 8 SCC 450 in which Hon'ble Apex Court has observed that "it is principle of law that if some thing is required to be done in a particular manner then that has to be done only in that way."

23. I also find that M/s L&T Ltd., imported the goods and warehoused in warehouse licensed under Section 58 of Customs Act, 1962 [from 90 days to 1 year] are left in the warehouse beyond the period of 90 days (upto one year) and thus interest is recoverable in respect of such goods as demanded in demand notice, from M/s L&T Ltd., under Section 61(2)(ii) of Customs Act, 1962 read with Section 15(1) and Section 47 of Customs Act, 1962.

24. I further find that the section 72(1)(b), when read with the provisions of Section 61(1)(b) of the Customs Act, 1962 make it amply clear that where any warehouse goods have not been removed from a warehouse at the expiration of one year from the date when permission to deposit such goods in a warehouse is granted, the goods are to be treated as improperly removed goods. Since the M/s L&T Ltd has not removed the impugned goods for the warehouse within the stipulated period, I hold these goods improperly removed from the warehouse."

5.1 Mr. Shah has raised the ground of maintainability as a preliminary contention. He submitted that the petitioners have challenged the show-cause notice dated 18.04.2013 and the Order in Original dated 18.02.2016 issued by the Divisional Assistant Commissioner, Central Excise & Customs, Division-II, Surat-II to which remedy of an appeal against the order impugned is provided under the provisions of Customs Act, 1962. He submitted that since the petitioners have directly approached this Court without availing remedy prescribed under the law, the petitions deserve to be dismissed in limine.

5.2 Coming to the merits of the case and the contentions raised by both the learned Counsel appearing for the petitioners, Mr. Shah at the outset has drawn the attention of this Court to Sections 58, 59 and 72 of the Act and submitted that the license under Section 58 of the Act was granted subject to the conditions specified therein and on execution of bonds by the petitioner company as required under Section 59 of the Customs Act, binding themselves as -

[a] to observe all the provisions of this Act and the rules and regulations in respect of such goods;

[b] to pay on or before a date specified in a notice of demand all-duties, and interest, if any, payable under sub-section (2) of section 61;

[c] to discharge all penalties incurred for violation of the provisions of this Act and the rules and regulations in respect of such goods.

5.3 It shall be appropriate to reproduce sections 58, 59 and 72 and the same read as under:

"58. Licensing of private warehouses.-

(1) At any warehousing station, the Assistant Commissioner of Customs or Deputy Commissioner of Customs may license private warehouses wherein dutiable goods imported by or on behalf of the licensee, or any other imported goods in respect of which facilities for deposit in a public warehouse are not available, may be deposited.

(2) The Assistant Commissioner of Customs or Deputy Commissioner of Customs may cancel a licence granted under sub-section (1)-

(a) by giving one month's notice in writing to the licensee; or

(b) if the licensee has contravened any provision of this Act or the rules or regulations or committed breach of any of the conditions of the licence:

Provided that before any licence is cancelled under clause (b), the licensee shall be given a reasonable opportunity of being heard.

(3) Pending an enquiry whether a licence granted under sub-section (1)

should be cancelled under clause (b) of sub-section (2), the Assistant Commissioner of Customs or Deputy Commissioner of Customs may suspend the licence.

59. Warehousing bond.-

(1) The importer of any goods specified in sub-section (1) of section 61, which have been entered for warehousing and assessed to duty under section 17 or section 18 shall execute a bond binding himself in a sum equal to twice the amount of the duty assessed on such goods-

(a) to observe all the provisions of this Act and the rules and regulations in respect of such goods;

(b) to pay on or before a date specified in a notice of demand,-

(i) all duties, and interest, if any, payable under sub-section (2) of section 61;

(ii) rent and charges claimable on account of such goods under this Act, together with interest on the same from the date so specified at such rate not below eighteen per cent. and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette; and

(c) to discharge all penalties incurred for violation of the provisions of this Act and the rules and regulations in respect of such goods.

(2) For the purposes of sub-section (1), the Assistant Commissioner of Customs or Deputy Commissioner of Customs may permit an importer to enter into a general bond in such amount as the Assistant Commissioner of Customs or Deputy Commissioner of Customs may approve in respect of the warehousing of goods to be imported by him within a specified period.

(3) A bond executed under this section by an importer in respect of any goods shall continue in force notwithstanding the transfer of the goods to any other person or the removal of the goods to another warehouse:

Provided that where the whole of the goods or any part thereof are transferred to another person, the proper officer may accept a fresh bond from the transferee in a sum equal to twice the amount of duty assessed on the goods transferred and thereupon the bond executed by the transferor shall be enforceable only for a sum mentioned therein less the amount for which a fresh bond is accepted from the transferee.

72. Goods improperly removed from warehouse, etc.-

(1) In any of the following cases, that is to say,-

(a) where any warehoused goods are removed from a warehouse in contravention of section 71;

(b) where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under section 61 to remain in a warehouse;

(c) where any warehoused goods have been taken under section 64 as samples without payment of duty;

(d) where any goods in respect of which a bond has been executed under and which have not been cleared for home consumption or exportation are not duly accounted for to the satisfaction of the proper officer, the proper officer may demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods together with all penalties, rent, interest and other charges payable in respect of such goods.

(2) If any owner fails to pay any amount demanded under sub-section (1),

the proper officer may, without prejudice to any other remedy, cause to be detained and sold, after notice to the owner (any transfer of the goods notwithstanding) such sufficient portion of his goods, if any, in the warehouse, as the said officer may select."

5.4 Mr. Shah submitted that some of the consignments so imported and stored in warehouse were used in manufacturing in warehouse and were cleared from warehouse after expiry of one year. He submitted that the petitioner company had never applied for extension of warehousing period, in respect of imported warehoused goods and that some of the consignments so imported and stored in warehouse were used in manufacture in warehouse and were cleared from warehouse after expiry of 90 days and before 1 year. He submitted that the exemption from levy of customs duty is irrelevant in light of the fact that goods were warehoused beyond a period of 1 year without obtaining permission of extension as specified under Section 61 of the Customs Act. Therefore, duty is payable on the impugned goods under Section 72 read with Section 142 of the Act.

5.5 Mr. Shah submitted that the petitioners' plea that, levy of customs duty is exempted by a specific notification under the Customs Act and such goods are assessed at Nil rate of duty by Customs Officer and hence there is no case of recovery of duty, is not tenable in view of the fact that the demand notice has been issued on the warehoused goods which were imported duty free and left in the bonded warehouse. He supported the demand notice dated 18.04.2013 issued to the petitioners and submitted that the notice is rightly issued for the imported goods which are left in the warehouse beyond the period of one year as specified in Section 61(1)(b) and no permission has been obtained for extension of warehousing period in respect of such warehoused goods from the Commissioner of Customs or from the Chief Commissioner of Customs as the case may be as required under Clause (B) of proviso to sub-section (1) of Section 61. He submitted that the demand has been issued on the imported goods under which duty has been forgone by way of not fulfilling the conditions or for violation of Section 61 of the Customs Act, 1962 and not for the final product i.e. Oil Exploration Platform, related machinery and ships which have been assessed nil rate of duty by the Custom Officer.

5.6 Mr. Shah submitted that the petitioners neither filed defence reply nor chose to attend personal hearing though opportunity of personal hearing was given on 08 different occasions to the petitioner company. He submitted that therefore the impugned order in original confirming the demand of Rs.330,92,81,470/- in terms of Section 72(1) of the Act and also demand interest of Rs.202,69,93,433/- in terms of Section 61(2)(ii) of the Act.

5.7 Mr. Shah further submitted that the private bonded warehouse license has been issued under section 58 of the Act to the petitioner company for storing the duty free material in the private bonded warehouse and manufacturing permission has been given under Section 65 of the Act for manufacturing the goods in private bonded warehouse. Material issued for production under issuing slip is for only supervision purpose/accounting purpose or for maintaining the details of material or goods in as it is condition or under process. Goods are to be manufactured in the bonded premises as per the condition of the licence. Material issued for production cannot be said to be material that has been ex-bonded because goods still lie in the bonded premises even after issuance of the material. Any goods would be treated ex bond only if the goods are taken out from the private bonded warehouse. The material issued for production still lies in the bonded premises either in as it is condition or semi finished condition or in finished product till clearance of the goods from the bonded warehouse after filing of exbond Bill of Entry or Shipping Bill for export. Till then the goods are exported/cleared for home consumption on payment of duty as case may be cannot be treated ex-bond as the goods are not finally taken out from the private bonded warehouse and when the goods finally clear from warehouse the petitioner filed ex-bond Bill of Entry along with utilization certificate and payment of duty on the goods/scrap that has not been consumed in the final product as per the condition. It is further submitted that issue slip is issued by the Inspector and he is not the proper authority to ex-bond the material.

[6] Having given our anxious consideration to the issues raised in these petitions, reiteration of certain undisputed facts, at the cost of repetition, would make us reach our conclusion:

(1) The company is engaged in ship building activity and various other projects for which they have been granted license for Private Bonded Warehouse under Section 58 of the Customs Act, 1962. Such warehouse is used for storage of steel plates, sheets, rods, structural components etc without payment of duty which are used for manufacture of ships. At the time of passing of the impugned order-in-original, the license was valid.

(2) It is also not disputed that consequent upon the grant of warehousing license under Section 58 of the Customs Act, 1962, the company has the permission under Section 65 of the Customs Act, 1962 to carry out manufacturing processes and other operations related to the imported goods in the warehouse.

(3) Both, the license under Section 58 and the one under Section 65 of the Customs Act, 1962 have certain conditions attached to them. They are produced as a part of the paper-book. As per the conditions of the license under Section 58 of the Customs Act, the licensee shall maintain stock books and stock cards in such a manner as the Assistant Collector may prescribe and they shall be produced whenever there is a demand for their production. The condition further stipulates that the licensee should also follow the subsidiary rules prescribed by the Assistant Collector of Customs for carrying out the inbond manufacturing under Section 65 of the Customs Act, 1962.

Conditions of license under Section 65 also indicate that the manufacturer shall have two Customs Inspectors for two shifts of eight hours. No operations, whether of warehousing, issue from and deposit into the store room, manufacture and ex-bond removal shall be conducted without the further supervision of the proper customs officer. No manufacture/repair operations with the bonded materials shall be conducted at the place outside area licensed under Section 58 of the Customs Act, 1962. No manufacturing process other than the one mentioned in the letter of sanction shall be conducted at anytime except with the prior permission of the Asst. Collector of Customs.

Manufacturer has to submit a monthly statement regarding the receipts-consumption-balance bonded goods. Besides, once in every six months stock taking of all bonded materials will be done. The Customs Officer under the supervision of the Superintendent shall physically verify and take an inventory of all the stock of the materials, stock in process and the finished product. The discrepancies not accounted for by the licensee to the satisfaction of the Asst. Collector of Customs will be liable to be charged with duty and fine and the licensee to penalize as per the provisions of the Act and the Rules.

There are certain conditions under the heading Warehousing and Manufacturing Operations which we have reproduced herein above. Reading conditions 14 and 15 which are reproduced hereunder again would indicate checks and balances at the hands of the Customs Officer:

"14. The bonded material required for manufacture shall either be imported by M/S. Larsen & Toubro Ltd. and taken from their Bonded W/H or from the bonded W/H of M/S. Mazagon Dock Ltd. at Bombay on whose behalf the applicant (L&T) has been permitted to carry out premises of M/S. Mazagon Dock Ltd. and deposit of same in the bonded W/H of M/S. Larsen & Toubro Ltd. at village Mora shall be done in terms of provision of Section 67 of C.A. 1962 and under preventive supervision. On completion of manufacturing jobs, the Mazagon Dock Ltd. or ONGC under the same provision of Section 69 of C.A. 1962. The material received by M/S. Larsen & Toubro Ltd. shall be duly accounted by them and wastage/refuse to be cleared on payment of duty as described in earlier paras.

15. The proper Customs Officer at the warehouse shall verify at the warehouse the imported/transferred bond/consignment and make entry in the warehouse register (proforma attached) and allow its deposit into the store-room. He shall ensure that the materials are stored bond-cum-itemwise and in such a manner as to allow easy and convenient access for check/inspection. The account will be kept separately for each different type/variety of the material. He shall also ensure, that proper stack cards (proforma attached) are displayed and maintained upto date with each

different lot.

(4) On record at pages 68 and 69 of the paper book of the petition is a sample copy of the Bond Register. In the Ex-Bond Columns of the Register, instead of usual particulars of shipping bills etc, the particulars of issue application has to be entered and later while clearing finished goods, as usual, ex bond papers have to be filed and completed. The warehouse registers are always in the custody of the Customs Officer who issues materials and controls the entire warehouse and manufacturing operations. Reading of the Bond Register's sample would indicate that the Officer has marked the date of issue slips and also in the Duty column, the word "exempted" is endorsed. Balance quantity is shown as nil. Likewise, in the Bill of Entry for Home Consumption and Ex-Bond Clearance would reveal that they are exempted from duty which has been assessed as "NIL" on manufacture of goods during the disputed period.

(5) All these factual details extensively pleaded and argued have not been denied by the respondents. When the department asked for clarifications for the period in question vide their communication dated 25.05.2012, it was specifically replied by the petitioners that they had obtained permissions for warehouse under Section 58 of the Customs Act, 1962. After the goods were imported under Section 65 of the Customs Act, 1962, they were issued immediately for further use in the intended manufacturing activity and the production cycle of the ship manufacturing is very long. The manufacturing activity is carried out in the shipyard and the petitioner had declared that the designated activity will be carried out in the designated area as permitted under Section 65 of the Customs Act, 1962. It was their case that extensions were not asked for goods issued for manufacturing and not cleared as final product within a year as such extension is only necessary for goods deposited in the Warehouse and will not be applicable to goods issued on issue slip for further intended manufacture.

The same stand was reiterated in their communication dated 6/3/2013. It was explained that there was no purpose of storing the material in the private bonded warehouse as the imported material is immediately used for

use in further manufacturing on the basis of the Issue Slip. The goods therefore do not remain as warehoused goods.

[7] What therefore emerge from the statement of facts from

(1) to (5) above are that:

(a) The notification dated 17.03.2012 clearly indicates that the raw material used for manufacture of goods in connection with the purpose of off-shore oil exploration are exempt from duty and such goods are therefore assessed at nil rate of duty.

(b) From a conjoint reading of the conditions of the warehousing license issued under Section 58 of the Customs Act, 1962 read with the conditions of license under Section 65 of the Customs Act, 1962 it is apparent that through-out the disputed period from 31.3.1986 to 3.12.2012 there were sufficient checks and balances, where the officers of the department were issuing slips, monitoring registers making entries in the ex-bond as issue slips but at no stage did an objection come forth that the licenses of the petitioners need not be extended. Even while issuing goods for manufacturing under Section 65 of the Customs Act, 1962 the bond officer would certify the duty leviable as "exempted" or "nil".

(c) What is relevant is that under the provisions of Sections 58 and 65 of the Customs Act, 1962, the private bonded warehouse was the site of the manufacturing process as well. Monthly statements were being submitted, there was periodical stock verification and CAG Audits of the warehousing and manufacturing operations. It was in this context that the letter dated 6/3/2013 has to be read. The warehoused goods were used in the manufacturing process in-house and consumed and therefore the need for extension of permission to store bonded goods was not necessary as they were being subsumed in the manufacturing process which was long. There were therefore no extensions for "goods stored in bonded warehouse" as they were immediately out on the assembly for manufacture as per the issue slips within the stipulated period. Even otherwise, there is no dispute that the

licenses for, both the warehouse and the manufacture, under Sections 58 and 65 of the Customs Act, 1962 were in force. Factually, therefore, we are in agreement with the submissions of Mr Joshi that having had a system of checks and balances and looking to the fact that the movement of goods was monitored and that the goods were immediately subsumed in the process of manufacture, to raise such a issue for the period from 1986 to 2012 is belated. That apart, issue slips which were registered in the Bond Register as per the sample copy would reveal that the goods were removed from manufacture and were not retained or stored in the warehouse as goods not used for the purpose inviting penal action under the provisions of Sections 61, 65 and 72 of the Customs Act, 1962.

[8] The term "warehoused goods" is defined under Section 2(44) of the Customs Act, 1962. The same reads as under:

2(44):"warehoused goods means goods deposited in a warehouse"

8.1 Let us test the submission of the petitioner that as per their stand in the communication dated 6/3/2013, the goods do remain warehoused goods as defined under Section 2(44) of the Customs Act, 1962. What is evident from the chain of transactions is that the import material is for in-bond manufacturing process. Issue slips and the sample register suggest that such goods stored in the warehouse are immediately released for the purposes of manufacture and the customs officer at the site so verifies the same. In other words, as per the definition in Section 2(44) of the Customs Act, 1962 once these goods are released in the manufacturing process, merely because the same private bonded warehouse also is the situs of the manufacturing process under Section 65 of the Customs Act, it cannot be said that the goods are warehoused goods and have so remained in such warehouse beyond the stipulated period in breach of the provisions of Section 61(2)(ii) of the Customs Act, 1962.

8.2 Reading of Section 65 particularly sub-section(1) of Section 65 of the Customs Act, 1962 would reveal that with the sanction of the competent officer, the owner of any warehoused goods may carry on any manufacturing process or other operations in relation to such goods. In other words, when

in relation to such warehoused goods, the process of manufacturing is undertaken with the sanction under Section 65 of the Customs Act, 1962, it cannot be said that the warehoused goods have remained in the warehouse in breach of Section 61(2)(ii) of the Customs Act because the warehousing period of such goods is not extended bona fide as the distinction between such goods as warehoused goods gets obliterated once they are issued for manufacturing. Merely because they remain within the bounds of the warehouse as part of the manufacturing cycle, non-extension of license of such goods as warehoused goods and the breach of Section 61(2)(ii) shall not be attracted as such goods then are goods subsumed in the manufacturing process under Section 65 of the Customs Act, 1962.

8.3 It is in this context has Mr Joshi rightly placed reliance on the spirit of the amended provision in the Finance Bill 2016 in Section 61. The relevant clause (b) of Section 61 of the amended Act reads as under:

"61(1)(b) Any warehoused goods may remain in the warehouse in which they are deposited or in any warehouse to which they are removed:

(b)in the case of goods other than capital goods intended for use in any hundred percent export oriented undertaking or electronic hardware technology park unit or software technology park unit or any warehouse wherein manufacture or other operations have been permitted under section 65, till their consumption or clearance from the warehouse."

[Emphasis Supplied]

8.4 This therefore suggests that when the goods remain in the warehouse which also is a manufacturing site, the restriction of removal from the warehouse within the stipulated period is immaterial.

[9] It is in the background of this that the provision of Section 72 of the Customs Act, 1962 needs to be considered. Section 72 speaks about goods improperly removed from the warehouse. Section 72(1)(b) provides that where any warehoused goods have not

been removed from a warehouse at the expiration of the period during which such goods are permitted under Section 61 of the Customs Act, 1962 to remain in the warehouse, the proper officer may demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods together with all penalties, rent interest and other charges payable in respect of such goods.

[10] When admittedly the issue slips indicate that the goods have been issued from the warehouse for the purpose of manufacture, merely because the process of manufacture is within the bonded warehouse the breach of Section 61(2)(ii) as aforesaid, having held to be not attracted, consequentially Section 72(1)(b) also does not come into play and payments therefore so demanded by the impugned Order-In-Original are without authority of law.

10.1 This is notwithstanding the fact that even otherwise, as per notification dated 17.03.2012 of the Government Of India, the raw materials and parts used for the manufacturing of goods supplied in connection with the purposes of Offshore Oil exploration and Ships are exempt from customs duty. These exemptions are subject to condition that manufacturing of Platforms and Ships be done in accordance with Section 65 of the Customs Act, 1962.

10.2 In the case of hand, the authorities have not complained of any breach of Section 65 of the Customs Act, 1962 and therefore even otherwise the raw material is exempted from duty. It is in this context that the word "exempted" and "nil" have been endorsed in the Bill of Entry. On this count also therefore the impugned order shall fail the test and therefore is required to be held as illegal.

[11] Reading of the letter dated 8.03.2016 by the Chief Commissioner of Central Excise and Customs in the case of one M/S ABG Shipyard Ltd also supports the case of the petitioner. The letter reveals that the Commissioner of Surat-II was requested in that case to give a detailed view and comment on the applicability of extension of warehousing period in respect of application dated 15/5/2013. In a report dated 4.3.2016, the Commissioner opined that since goods were cleared from the warehouse under issue slip within the prescribed period of one year there is no need to exercise power under Section 61 of the Customs Act, 1962 for extension of warehousing period.

11.1 In the facts of the present case, evident it is, from the sample register that the case is one similar to that of ABG Shipyard Ltd. By way of an additional affidavit, the petitioner has placed on record a communication dated 9/3/2017 issued by the Ministry of Finance to the Chief Commissioner of Central Excise, Customs and Service Tax. The extract of the clarification reads as under:

" SUB;Request for clarification w.r.t. Circular 22/2016 dtd.31.05.2016

Please refer to your letter F.No.VIII/8- 1/CCO/T/Cus/2017 dtd.7.2.2017 on the captioned subject.

In this regard, it is clarified that a manufacturer operating under Section 65 of the Customs Act, 1962 is required to maintain accounts of imported/procured as enjoined under the Manufacture & Other Operations in Warehouse Regulations,1966 (MOOWR).

Manufacture under Section 65 does not require any Bill of Entry to be filed for the inputs used for such manufacture as the inputs are subsumed in the final product. (emphasis supplied) The account maintained under MOOWR,1966 provides for due accountal inputs".

11.2 This precisely has been the stand of the petitioner, which the Union Of India has realized and brought in tune with the amended Finance Bill substituting Section 61 of the Customs Act, 1962. therefore, even on this count we hold the action of the authority in passing the impugned Orders-In-Original as illegal.

[12] The stand of the authorities and the basis of the impugned orders that the imported goods were left in the warehouse beyond the period specified under Section 61(2)(ii) falls flat in view of the aforesaid reasons. The authorities have acted far beyond reasonable period. The orders are also without authority of law and jurisdiction and in addition to the time of the pendency of these petitions, we have therefore no reason to

relegate the petitioners to the remedy of appeal, when the orders have been held to be bad, for the reasons aforesaid.

[13] All the petitions are therefore allowed. The impugned Orders-In-Original are quashed and set aside. Rule is made absolute accordingly with no orders as to costs.

