**BEFORE THE ADJUDICATORY BOARD FOR MAJOR PORTS, MUMBAI**

## Application No. 03 of 2024

**APPLICANT**:

Preetika Shipping Agency Private Limited,
3, M.K. Bhavan, 4th Floor, SBS Road,
Fort, Mumbai – 400001.

V/s.

**RESPONDENT**:

Mumbai Port Authority,
Port Bhavan, 2nd Floor
S.V. Marg, Ballard Estate,
Mumbai - 400 001.

**APPEARANCE:**

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| For the Applicant | : | Advocate Kunal Naik along with Advocate Keyna Bhavsar. |
| For the Respondent | : | Advocate Hamza Lakhani along with Advocate Heenal Wadhwa. |

**CORAM:**

Hon'ble Justice Shri A. J. Desai – **Presiding Officer.**
Hon'ble Dr. Sanjeev Ranjan – **Member.**

# JUDGMENT

**Dated: 24 September 2026**

**1.** The present application has been filed under Section 32 of the Major Port Authorities Act, 2021 with a prayer to quash and set aside a demand in the nature of Invoice No.2223M2482269 dated 05/05/2022 for Rs.32,90,410/- (Rupees Thirty Two Lakhs Ninety Thousand Four Hundred and Ten only) towards charges, for providing services to a vessel "GAL INSTALLER' for stay between 16/03/2020 to 29/08/2020 within the territory of Mumbai Port Authority (erstwhile Mumbai Port Trust) for the purpose of scrapping the same, on various grounds and is requesting the Board to direct the Respondent i.e. Mumbai Port Authority, to recall the said invoice.

**2.** The case put forward by the Applicant is as under:

That pursuant to the Orders passed by the Bombay High Court in Company Petition No. 27 of 2014 and Company Petition No. 119 of 2015, (dated February 7, 2020 and 21 February 2020) the permission came to be

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granted to auction the vessel "GAL INSTALLER", which was initially registered as a coastal vessel under the Coasting Vessels Act, 1838, in the name of Great Offshore Limited. The barge was purchased by one ACE Ship Recycling Pte. Ltd., (herein after referred as "ACE"), for scrapping the said barge vide sale certificate dated March 16, 2020. Subsequently, ACE sold the barge to Novatic Trading FZE on 25/05/2020. The provisional registration with Niue Ship Registry was transferred to Novatic on 01/06/2020. Thereafter, Novatic appointed Trinitas Ship Management Agency as managers for the said barge.

It is further the case of the Applicant that on 05/06/2020, the Barge lost her forward anchor in inclement weather. There was an apprehension that aft anchors will chaff which will lead to the barge drifting. Thus, it was decided to immediately shift the Barge to Alang. However, in view of non-availability of tugs coupled with the cyclonic conditions prevailing at the time, based on advice received from the Respondent, a decision was taken to shift the Barge to a safer location closer to Darukhana. Between 05/06/2020 and 06/06/2020, a

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cyclone hit Mumbai and in heavy weather, the Barge dragged anchor. Thus, there was an immediate requirement to move the Barge to Darukhana. On 06/06/2020, the Harbour Master issued permission and with the assistance of Respondent's Tug, the Barge was shifted closer to Darukhana and grounded there in the interest of safety. On 08/06/2020, the present Applicant i.e. Preetika Shipping Agency Private Limited was appointed as the agent for the said Barge.

On 10/06/2020, Novatic sold the Barge to OM Namo Ventures (Referred as "OM Namo") for recycling / scrapping at Darukhana, Mumbai since it was not viable to tow the Barge to Alang. On 30/07/2020, the Respondent issued an invoice for Rs.19,16,060/- (Rupees Nineteen Lakhs Sixteen Thousand and Sixty only) including GST for the period from 16/03/2020 to 08/06/2020. It is also the case of the Applicant that by the said invoice, the Respondent had incorrectly levied charges on the basis that the Barge was a 'self-propelled barge', when undisputedly the said Barge was a 'dumb barge'.

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The Barge was beached at Darukhana on 29/08/2020. Prior to beaching, the Applicant – PSA deposited Rs.24,35,290/- + TDS Rs.31,356/- (Total Rs.24,66,444/-) with the Respondent towards anchorage and other charges as notified by the Respondent to the Applicant – PSA. It is the case of the Applicant that breaking was completed on 21/01/2021. Om Namo paid in all Rs.53,61,836/- (Rupees Fifty Three Lakhs Sixty One Thousand Eight Hundred and Thirty Six only) to the Respondent for ship breaking charges for the period 29/08/2020 to January 2021 for utilization of the plot at Darukhana.

It is the case of the Applicant that subsequent to issue of letter to Om Namo about treating the vessel as a 'self propelled barge' instead of 'dumb barge', the Respondent accepted the mistake committed by it and on 16/02/2021, refunded an amount of Rs.88,267/- (Rupees Eighty Eight Thousand Two Hundred and Sixty Seven only) treating the vessel as dumb barge.

It is the case of the Applicant that subsequently on 26/04/2021, the Respondent sent a letter to Om Namo

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and present Applicant – PSA, contending that why the bill should not be raised treating the vessel as a foreign vessel since the registration of the vessel in question was closed on 21/05/2020 at the request made by ACE Ship Recycling Pvt. Ltd., by Mercantile Marine Department of Government of India and called upon both of them to respond about the demand made by the Respondent – Port. It is the case of the Applicant that by communication dated 05/05/2021, Om Namo Venture as well as present Applicant had explained the reasons to not treat the vessel as foreign vessel. It is the case of the Applicant that by several communications, present Applicant had made it clear that the vessel has never travelled beyond territory of Mumbai Port Trust and cannot be treated as a foreign vessel. It is the case of the Applicant that detailed reply was given to the Respondent on 12/05/2022 i.e. subsequent to impugned invoice dated 05/05/2022. Two communications dated 26/05/2022 and 30/05/2022 were sent by the present Applicant to the Respondent, in addition to earlier request, not to treat the vessel as foreign vessel, and in alternate, demand was made that a circular

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dated 01/10/2019 which is issued by Respondent shall be made applicable since the vessel had become cargo since it was beached only for the purpose of scrapping. However, the said request has not been responded. On these grounds, the present application has been filed requesting to pass appropriate order.

**3.** In response to the notice issued to the Respondent, an affidavit in reply has been filed by the Respondent and has produced documents in support of the case.

**4.** The Respondent has opposed the claim put forward by the Applicant praying that the vessel shall not be treated as 'foreign vessel'. The registration of the barge in question was closed on 21/05/2020 and accordingly a certificate / communication was sent to ACE Ship Recycling Pte. Ltd., informing that the vessel GAL INSTALLER is closed under the Coasting Vessels Act 1838 and therefore the vessel can only be treated as 'foreign vessel'. It is the case of the Respondent that the provisional registration was granted to the vessel in question by Niue Ship Registry on 06/03/2020 which was to be expired on 06/06/2020. It is the case of the

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Respondent that the vessel in question thereafter was never registered with the Department of Shipping of Government of India and therefore the charges sought to be levied as per the impugned invoice dated 05/05/2022 is legal and valid and therefore prayed to reject the application.

It is the case of the Respondent that the issue raised by the Applicant about non-issuance of notice or not giving an opportunity of hearing before issuing the invoice treating the vessel as a foreign vessel, is without any basis. It is the case of the Respondent that the Major Port Authorities Act, 2021 came in force with effect from 03/11/2021. The Respondent had issued a communication dated 26/04/2021 and called upon M/s.Om Namo Ventures, M/s.Atlantic Shipping Pvt. Ltd., and M/s.Preetika Shipping Agency Pvt. Ltd., i.e. the present Applicant; calling upon them to reply why the amount shall not be raised treating the vessel as foreign vessel and appropriate scale of rate applicable as far as the vessel in question is concerned. The said notice/ communication was responded by Novatic Trading F.Z.E.,

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Om Namo Ventures as well as the present Applicant i.e. Preetika Shipping Agency Pvt. Ltd. It is the case of the Respondent that after considering the fact about non-registration of the vessel with the concerned department of Government of India, the vessel was treated as 'foreign vessel' and accordingly impugned invoice is issued.

It is the case of the Respondent that the circular dated 01/10/2019 issued by the Mumbai Port Trust cannot be made applicable. Since the said circular is applicable for those vessels which discharged cargo in stream and subsequently the cargo is brought to berth at Mumbai Port. It is the case of the Respondent that the vessel in question has not discharged any cargo and therefore the said notification cannot be made applicable and hence, it has been prayed that the application be dismissed.

**5.** Subsequently on filing of the affidavit in reply, the Applicant has filed two rejoinders dated 09/03/2026 and 11/03/2026.

**6.** On completion of pleadings, the application was heard at length. As prayed by the learned advocate

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appearing for the respective party, time to furnish the written arguments was granted and accordingly, the parties have submitted their written submissions.

**7.** We have heard the learned advocates appearing for the respective party.

Learned advocate appearing for the Applicant who submitted that the vessel in question cannot be treated as 'foreign vessel' and therefore the original scale of rates which was initially applied in the present case is required to be applied and impugned invoice may be quashed and set aside.

**8.** It was argued that the Respondent has incorrectly identified the barge as a "foreign going dumb barge" and not a "coastal/inland vessel". It was argued that Clause 2.15 (A) and (B) of the SOR divides the rates to be levied on dumb barges into two categories i.e. 'Coastal / Inland Vessel' or 'Foreign Going Vessel'. The Barge is not a 'Foreign Going Vessel' as claimed by the Respondent. It was argued that the barge was judicially sold to ACE only for the purpose of breaking / scrap. Subsequently, the auction of vessel was permitted by Hon'ble Bombay High

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Court, only for the purpose of breaking / scrap and therefore it cannot be treated as foreign going vessel. It was argued that only a provisional registration of the barge was issued with the Niue Ship Registry. The provisional certificate remarks that the Barge shall "only proceed on one single delivery voyage without cargo or passenger under Tow, from Mumbai, India to Alang . The Provisional Certificate lapsed on 06/06/2020. Additionally, the Provisional Certificate issued to Novatic also lapsed on 06/07/2020. It was submitted that Niue Ship Registry had never issued any permanent registration for the barge in question and therefore it cannot be treated as a foreign vessel or foreign going vessel. Therefore the barge was beached at Darukhana for scrapping on 29/08/2020 and breaking was completed on 21/01/2021. The barge had never crossed the territory of Respondent and therefore it cannot be considered as "foreign going vessel".

**9**. It was alternatively argued that even assuming the flag of the barge is to be considered for computing anchorage charges, the Provisional Certificate dated 06/03/2020 lapsed on 06/07/2020. Therefore, from

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07/07/2020 the Barge cannot even be considered a 'Foreign-flagged Vessel'. A permanent registration was never obtained for the Barge. It was argued that the Applicant did not give up its Indian flag. Therefore, upon the lapse of the Provisional Certificate i.e. on 06/07/2020, the Barge will be considered an Indian flagged vessel. Therefore, the barge has been incorrectly identified as a foreign – flagged Vessel by the Respondent. It was argued that the contentions raised by the Respondent about applicability of Section 22 of the Merchant Shipping Act, 1958, is not relevant. It was submitted that the Respondent has failed to show that the vessel cannot have a dual flag. It was argued that during the period 06/03/2020 till 21/05/2020, the barge had dual flag and therefore it can also be treated as having Indian flag and therefore the rates can only be applied treating the vessel as Indian vessel and had rightly applied in past.

**10.** Another ground raised by the Applicant with regard to validity of impugned invoice, is with regard to non-issuance of a valid show cause notice. It was argued that the Respondent has wrongly attempted to pass off its letter

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dated 26/04/2021 as a Show Cause Notice. However, the same cannot be considered as a Show Cause Notice for the following reasons:

a. Show Cause Notice must specifically and unambiguously mention the penalty/ action that will be imposed upon the Noticee. The Respondent's letter dated 26.04.2021 did not setout the penalty/ action that would be imposed and the law under which the Respondent had the power to levy additional charges;

b. The show cause notice must follow the appropriate format. Mere letters cannot be treated as a show cause notice;

c. The show cause notice must provide the Noticee a reasonable opportunity to defend itself.

**11.** It was argued that a quasi-judicial authority must adhere to the principles of natural justice and issue a valid show cause notice upon the Noticee before taking any action. Additionally, Section 56 of the Major Port Trusts Act, 1963 ("the MPT Act") also provides directives on the issuance of a notice.

**12.** It was argued that the letter dated 26.04.2021 does not constitute a valid show cause notice. The letter dated 26/04/2021 does not adhere to the principles specifically laid down in Section 56 of the MPT Act. Furthermore, even after the letter dated 26/04/2021, the Respondent failed to provide the Applicant with any reasoned order / letter stating the amount/ penalty / action which was being levied on the Applicant. The Respondent failed to adhere to the principles of natural justice. In addition to the above, it was argued that Section 56 of the MPT Act provides that no such notice shall be issued after the expiry of two years from (a) when the charge is short-levied, from the date of the payment of the charge ; (b) where a charge has been erroneously refunded, from the date of the refund. Therefore, the Respondent is out of limitation and cannot issue a fresh notice for the amount specified in the Impugned Invoice, if the impugned invoice is recalled.

**13.** It was argued that the only reason that the requirements under Section 56 of the MPT Act were not followed because the Respondent did not want to give the

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impression that it had a "pre-conceived notion" on the amounts to be levied cannot be taken into consideration. The amounts to be specified in the show cause notice is a judicial requirement under the MPT Act and must be adhered to. It is also pertinent to note that even after receiving multiple responses to their letter dated 26/04/2021, the Respondent failed to inform the Applicant of the specified amount penalty / action that it was going to levy and directly raised the impugned invoice. For the reasons set out above, the impugned invoice is non-est and must be recalled.

**14.** It was argued that additionally, the impugned invoice suffers from the same infirmities as the previous invoices:

The trade of the barge in the impugned invoice continues to be mentioned as "Coastal" whereas the Applicant has been charged by the MbPT under foreign rates;

The impugned invoice is calculated at the rates mentioned in Clause 2.1 5 (A) of the SOR (self-propelled barge) instead of Clause 2.15 (B) of the SOR (dumb barge). This is after the Applicant and Om Namo have written to

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the Respondent multiple times pointing out the same infirmity;

The nationality of the barge has also been mentioned as "India", whereas according to the Respondent the barge is a foreign-flagged vessel;

While the Respondent has denied that the barge is Cargo, the impugned invoice continues to detail the 'purpose' as "Cargo Operations". In any event, there was no cargo operations happening.

**15.** It was argued that MbPT has incorrectly refused to treat the barge as 'Cargo' and apply the concessional rate of 50% of the SOR prescribed in Clause 2.15 (A) and (B). As per Circular No. DC/B-OSC/Cir/ (2019)/1287 of the Mumbai Port Trust (Marine Department) dated 01/10/2019 ("the Circular"), a 50% concessional rate of the rates prescribed in Clause 2.15 (A) and (B) will be applicable for anchorage charges in relation to cargo brought to the berth at Mumbai port. It was argued that the barge is to be considered as 'cargo'. The Applicant has relied on the following documents/ authorities in support of its contention:

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A vessel imported into India for the purpose of demolishing / breaking / scrapping and for which the importer becomes liable for payment of customs duty is to be considered as goods / cargo imported in India. Once an importer has declared its intention of importing the vessel as goods in India (i.e. evidenced by way of the IGM and BoE) and its use as a ship for carrying cargo is discontinued, the vessel is considered mechanically and legally non-navigable and thus ceases to be a ship. There is no dispute between parties that (a) an IGM and BoE was filed for the barge and; (b) the barge was judicially sold only for the purpose of scrapping. Therefore, the barge is to be considered cargo. In support of its contention, the Applicant has relied on the following case laws:

(i) **Communications and Commerce International (Pvt.) Ltd. v. m.v. "SAABA" and anr:** (Notice of Motion No. 1302 of 2001 in Suit no. 14 of 2001) [Paragraph7].

**(ii)** It was relied on **New Era Shipping Ltd. v. m.v. P. Express & ors.** (2007 SCC OnLine Bom731) [Paragraphs 50 – 56, 58 – 59].

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**(iii)** It was relied on **Western Ship Breaking Industry v. Laiki Bank (Hellas) S.A.** [MANU/GJ/82SI/20C)6] (Paragraph 23).

**16.** It was argued that an Import General Manifest dated 02.07.2020 ("IGM") and a Bill of Entry dated 03.07.2020 ("BoE") was filed in respect of the Barge. This is not done for foreign vessels which come to the port for cargo operations – but only for Indian flagged vessels or vessels brought to India for scrapping; filed by the Applicant, wherein the description of 'goods' mentions GAL INSTALLER in ballast for scrapping purpose only.

By relying upon the provision of Central Board of Excise and Customs' Circular no. 16/ 2012 – Customs ('the CBEC Circular') which states that the term ' imported goods' under Section 29 r/w Section 2 (22) and 2 (25) of the Customs Act, 1962, it was submitted that vessel includes vessels entering India from any place outside the country (India). The category of 'vessels' include ' vessels which are brought into India for breaking up. Additionally, point no. 4 of the CBEC Circular states that

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an importer is required to file an 'IGM and BoE for vessels meant for the purpose of breaking/ scrapping'.

Thus, it was argued that the above documents and authorities clearly establish that the barge was to be considered as Cargo when (a) the barge was judicially sold only for the purpose of scrapping, (b) the IGM and BoE were filed and customs duty was paid; and (c) the Barge was brought at berth LBS-2 and eventually scrapped.

**17.** The learned advocate appearing for the Applicant has argued that the Applicant is entitled to an exemption / partial exemption in view of the peculiar facts of the case.

**18**. It was argued that under Section 53 of the Major Port Trusts Act, 1963, the Board has been granted with the inherent powers to exempt, either wholly or partially, any charge leviable according to any scale in force.

**19.** It was argued that, for the sake of equity, any additional charges levied by the Respondent by way of the impugned invoice must be exempted, either wholly or partially, for the following reasons:

Pursuant to the Covid 19 lockdowns, there were multiple administrative delays on the part of the authorities to provide permissions for beaching and scrapping of the Barge. These permissions that would usually take up to 10 days, took close to 60 days due to the administrative delays and thus the Applicant has already paid a considerably higher amount in anchorage charges;

The Respondent raised the Impugned Invoice after a considerable delay of 18 months after the 'Final Invoice' was issued;

The Barge was scrapped and breaking completed in 2021 and therefore, the Applicant has no way of recovering such amounts from the Barge. Grave and irreparable loss, damage and injury will be caused to the Applicant if an additional sum of Rs.32,90,410 is levied upon the Applicant by the Respondent.

**20**. For the reasons set out above, it was argued that the impugned invoice is non-est and must be withdrawn / recalled by the Respondent. Alternatively, appropriate Orders be made to exempt / partially exempt the Applicant

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from paying the impugned invoice. It has been also prayed that the interest of 15% p.a. from 15/05/2022 onwards on the impugned invoice be waived off.

**21.** It was argued that the MbPT is incorrect in withholding of the Applicant's TDS amounts.

**22.** In addition to the above dispute, it was argued that the Respondent has incorrectly withheld and failed to credit the TDS amount of Rs.6,33,880/- arising out of the Applicant's payment of the port bills for the Financial Year 2025-2026. These port bills were for vessels, unrelated to the present dispute and the relevant amounts have already been deposited with the Government. The Respondent has incorrectly withheld the amounts citing the ongoing disputes between the parties for MV GAL INSTALLER and another vessel, MV Karnika (matter presently ongoing before the Hon'ble Bombay High Court). Considering that these matters are currently under adjudication, the Respondent's reason for withholding the TDS amount on these grounds is wholly untenable in law. It was argued that the Applicant also set out its position to the Respondent vide a letter dated 10/07/2026.

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In view of the above, it was submitted that the Hon'ble Board may pass appropriate directions to the Respondent to release the TDS amount of Rs.6,33,880 in the Applicant's PD account.

**23**. On the other hand, the learned advocate appearing for the Respondent has opposed the submissions made by the Applicant's side by submitting the written submissions, so far as the ground for show cause notice is concerned. It was argued that a notice was issued on 26/04/2021 to the Applicant before revising the invoices, which itself amounts to a show cause notice. Thereafter, various correspondence have been exchanged between the parties and pursuant thereto, the Respondent has levied charges. It was argued that under section 56 of the Major Port Trusts Act, 1963, there is no provision for holding a hearing. It only states that the Port Authority 'may' issue a notice before levying charges. Therefore, even issuance of notice is discretionary and not mandatory. Further, reliance upon Section 27 of the 2021 Act by the Applicant is misconstrued and cannot be retrospectively applicable in the present case. Though the revised invoice is dated

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5 May 2022, the same is for the period between 16 March 2020 and 29 August 2020, Therefore, Section 27 of Major Port Authorities Act, 2021 is not applicable in the present case.

**24.** It was argued that the ground for the dumb barge is concerned, it was a coastal vessel and not a foreign vessel. Rates are fixed as per the character of the vessel and not as per the flag. It was argued that this ground is completely misplaced as the coastal registration of the vessel had been closed and the owner had obtained a foreign registration of the vessel on 6th March 2020. Therefore, from 6th March 2020, the Applicant's vessel had been granted the status of a foreign vessel. That the Applicant's contention is that the Indian Registration of the vessel was closed on 22/05/2020 is immaterial and was delayed only due to the outbreak of Covid-19 Pandemic. On perusal of the letter dated 22/05/2020, the Applicant had applied for closure of registration on 17/03/2020 itself and had acquired the status of a foreign vessel. The vessel was sold to ACE Shipping which had applied for registration under the Niue Ship Registry (New

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Zealand). Thereafter, ACE Shipping sold the Barge to Novatic Trading FZE, UAE. Subsequently, Novatic has sold the Barge to Om Namo Ventures. Pertinently, once the Indian Registration of the barge was closed in 2020, none of the owners applied for re-registration under the Merchant Shipping Act, 1958 or the Coasting Vessels Act, 1838. It is a well established principle of law that no ship shall be recognised as an Indian Ship unless the same is registered under the Merchant Shipping Act. Since, no registration has been sought, the vessel cannot be construed as an Indian Vessel merely because it was lying in Indian waters. The country of the vessel is determined from the flag, and the same has also been a practice followed by all countries in consonance with the United Nations Convention on the Laws of Sea ("UNCLOS"). All the countries who are signatories to UNCLOS, have incorporated legislations which mandates registration of vessels in their respective countries to be recognised as its country's vessels.

**25.** So far as the reason for treating the barge as a cargo and apply concessional rates is concerned, it was argued

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that as per the circular of 01/10/2019, 50% discount was applicable on anchorage charges for vessels which were discharging cargo in stream and subsequently bringing the cargo to berths. The same shall become abundantly clear from the introductory paragraph. The same is also reproduced hereinbelow-

*"MbPT Board has accorded approval for application of Concessional rates in anchorage charges and amendment in applicable rate for Stream shifting movement and shifting of Pass Pilot vessel from Lock Gate to Berth."*

However, in the instant case, the dumb barge has not carried out any activity. The same was also informed to the Applicant vide letter dated 06/06/2022 (Ex. B/ Pg.26 to the Reply). Therefore, concessional rates cannot be applied. It does not make any difference whether the barge is declared as a cargo or otherwise, since the vessel has anchored at the port property and occupying the Port Authorities' space, the Applicant is liable to pay such charges. It was argued that without prejudice, assuming the vessel has to be treated as a cargo, even then until 06 July 2020, when the vessel did not receive the status of

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cargo, the rates levied by the Respondent would apply. Further, as per Section 2(22) of the Customs Act, 1962, 'goods' would include within itself a vessel. Once the goods have entered into India they are still treated as foreign goods and therefore, the vessel being a foreign vessel occupying the space of the port authority, is liable to pay the charges of a foreign vessel as per the Respondent's SOR.

**26.** It was argued that the Applicant, at the time of the arguments, has contended that the vessel had a dual registration and should be treated as a foreign as well as an Indian vessel. This submission is contrary to Indian Maritime Law and has dire consequences, as in the absence of an Indian registration, the Applicant cannot contend that the vessel was an Indian vessel. Such a stand is being taken only to obviate its liabilities under the legitimate SORs of the Respondent. Therefore, this Hon'ble Authority be pleased to reject the same and direct the Applicant to pay the charges levied by the Respondent forthwith.

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**27.** It was argued that the Applicant has sought to rely upon various decisions which shall be dealt with by the Respondents hereinbelow-

a. **Gorkha Security Services Versus Government (NCT of Delhi) & Ors, [2014 SCC Online SC 599]:** This judgment is clearly distinguishable from the facts of the present case and was a case in which the contractor was blacklisted. The Applicant has sought to rely upon the same to contend that the principles of natural justice have not been followed in the present case. However, as per Section 56 of the 1963 Act, the Respondent was only required to give a notice before levying any charge. Further, even the said notice was at the discretion of the Respondent and was not mandatory as the section uses the word "may" and not "shall".

b. **Communication & Commerce International Pvt. Ltd. Versus M/s Saaba & Anr. [Notice of Motion No. 1302 of 2001 in Suit No. 14 of 2001 before the Hon'ble Bombay High Court]:** Even this case is distinguishable on the facts. Further, the decision relied upon is an interlocutory order passed in an interim application in an Admiralty

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Suit. Therefore, an order passed in an interlocutory application in a Suit cannot be used as a binding precedent.

c. **New Era Shipping Ltd. Versus MVP Express & Ors. [2007 SCC Online Bom 731]**: This decision has been relied upon as it follows the decision in Communication and Commerce International Private Limited (supra). Again, this is a decision passed in an interlocutory application in an Admiralty Suit. The same does not deal with any issue which has been canvassed in the present application before this Hon'ble Authority. Therefore, the reliance upon the same is completely misplaced.

d. **Western Ship Breaking Industry Versus Laiki Bank (Hellas) S.A. [MANU/GJ/8251/2006]:** Yet again, this is a decision in an Admiralty Suit and does not in any way deal with the issues canvassed before this Hon'ble Authority. In fact, in the said suit, it has been held that the Plaintiff had tried to mislead the Court to obtain wrongful orders, and the interim application of the plaintiff was rejected with costs.

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Hence, it is therefore submitted that there is no substance in any of the contentions raised and the application deserves to be dismissed with costs.

**28.** We have heard the learned advocates appearing for the respective party. We have considered the submissions made on behalf of the Applicant as well as Respondent and have also perused the documents produced on record.

**29.** The vessel namely 'GAL INSTALLER' was originally owned by one Great Offshore Limited. Pursuant to the order passed by Bombay High Court in Company Petition No. 27 of 2014 and Company Petition No. 119 of 2015, the said vessel was put to auction and the same was purchased by one ACE Ship Recycling Pvt. Ltd., particularly for scrapping purposes and sale certificate came to be issued on 16/03/2020. The vessel came to be sold by ACE Ship Recycling Pvt. Ltd., to Novatic Trading FZE on 25/05/2020. The provisional registration was issued by Niue Ship Registry in favour of Novatic on 01/06/2020.

Due to unavoidable circumstances and weather, the vessel could not be shifted to Alang Shipyard (State of

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Gujarat) and ultimately on 06/06/2020 permission was issued and the vessel was shifted closer to Darukhana i.e. Respondent's territory and grounded in the interest of safety. The present Applicant came to be appointed as an agent on 08/06/2020 for the said vessel.

**30.** Novatic sold the barge on 10/06/2020 to Om Namo Ventures for recycling / scrap purposes at Darukhana. Initially the Respondent issued invoice for using the port property for scrapping and treated the vessel as a 'self-propelled barge' instead of 'dumb barge'. Having come to know about the mistake committed by the Respondent, the Respondent itself refunded the amount Rs.88,267/- (Rupees Eighty Eight Thousand Two Hundred and Sixty Seven only) on 16/02/2021. The Respondent found that the invoice which was issued on 30/07/2020, was erroneous; a letter dated 26/04/2021 was issued to Om Namo Ventures as well as present Applicant – PSA clarifying that since the dumb barge namely GAL INSTALLER was not an Indian barge, why an appropriate rate for foreign vessel shall not be levied. If we see the letter dated 26/04/2021, the language itself makes it clear

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that the Respondent authority had called upon the present Applicant about applicability of foreign rates. The gist of the letter dated 26/04/2021 reads as under:

*"After the sale of Dumb Barge Gal Installer through High Court, the Purchaser M/s. ACE Ship recycling P. Ltd., vide their letter 17/03/2020 to Mercantile Marine Deptt. had applied for closure of Registry issued earlier to the said barge under Coastal Vessel Act, 1838. The said closure request was accepted and the Coastal Registry of the vessel was closed on 21/05/2020 vide MMD's letter No. R-24/540/34 dated 22/05/2020.*

*It is seen that the owner then obtained the Provisional Certificate of Registry under Merchant Shipping (Registration of Foreign Vessel) Act 2012 from Singapore issued on 01/06/2020, having date of Provisional registry as 06/03/2020.*

*As per SOR 1.2 (II)(i)(a)(II) – a foreign going vessel of foreign flag can convert to coastal run on the basis of license of specified period of voyage issued by the Director General of Shipping and a custom conversion order.*

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*As per SOR, since the flag of the vessel has changed from coastal to foreign, rate applied would have been in foreign rates instead of coastal from the date of Foreign Registry of the said barge.*

*Your clarification is therefore, requested within 07 days from the receipt of this letter on why the subject bills should not be raised in Foreign Rates. Kindly also furnish foreign conversion certificate of the said vessel from the competent authority."*

**31.** It is undisputed fact that the Act of 2021 came into force on 03/11/2021 i.e. subsequent to the communication dated 26/04/2021. We have also perused the reply by Om Namo Ventures, Novatic Trading, ACE Ship Recycling Pvt. Ltd., as well as present Applicant – PSA.

**32.** Apart from request by the Applicant to treat the vessel as Indian vessel and not to apply the rates treating the vessel as foreign barge, but also requested by another communication dated 30/05/2021 that the barge was brought in Mumbai Port territory for scrapping and therefore the same is required to be treated as goods vessel

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and discounted rates should be applicable in view of one circular issued by Mumbai Port Trust on 01/10/2019. It appears from the record that the request made by the Applicant to treat the vessel as having Indian identity, was not accepted and accordingly the charges were levied by issuing invoice dated 05/05/2022.

As far as herein issuance of invoice and giving opportunity of hearing is concerned, Section 56 of the MPT Act, 1963 would be relevant and same is reproduced herein below:

> ***"56. Notice of payment of charges short-levied or erroneously refunded.*** *– (1) When any Board is satisfied that any charge leviable under this Chapter has been short-levied or erroneously refunded, it may issue a notice to the person who is liable to pay such charge or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:*
>
> *Provided that no such notice shall be issued after the expiry of two years,-*

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*(a) When the charge is short-levied, from the date of the payment of the charges;*

*(b) Where a charge has been erroneously refunded, from the date of the refund.*

*(2)The Board may, after considering the representation, if any, made by the person to whom notice is issued under sub-section (1), determine the amount due from such person and thereupon such person shall pay the amount so determined."*

**33.** In our opinion, the communication dated 26/04/2021 from the Respondent makes it clear that the vessel in question is required to be treated as foreign vessel and accordingly the rates shall be applied and the Applicant was requested to respond after which the Respondent issued the impugned invoice. There is no provision in Section 56 of the MPT Act, 1963 to give an opportunity of hearing to the party and therefore, in our opinion, there is no breach of Section 56 of the Act and therefore we reply accordingly to this issue raised by the Applicant.

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**34.** It is apparent from the record that ACE Ship Recycling Pvt. Ltd., requested the Department of Ministry of Shipping / Mercantile Marine Department, Government of India, on 17/03/2020 requesting the Authority for closure of registry under Coasting Vessels Act, 1838. From the communication dated 22/05/2020, it is clear that the Authority has accepted the request made by ACE Ship Recycling Pvt. Ltd., and the registration of the vessel in question namely GAL INSTALLER came to be closed on 21/05/2020. Thereafter the vessel was registered with Niue Ship Registry and the provisional registration certificate was issued on 06/03/2020 having expired on 06/06/2020. The provisional certificate issued by Niue Ship Registry which is produced by the Respondent makes it clear that the vessel was temporarily registered and the certificate was issued at Singapore on 06/03/2020. It is undisputed fact that after obtaining provisional registration on 06/03/2020, owner of the vessel requested the concerned department of Government of India on 17/03/2020 for closure of registration which was accepted. Thereafter neither the owner of the vessel nor

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the present Applicant who is appointed as an agent requested any Authority for registration with concerned department of Government of India for either registration or even temporary registration.

**35.** There is no provision that a vessel could have two nationalities and therefore in absence of any type of registration with the Indian Government authority, the vessel cannot be treated as Indian vessel and therefore the rates subsequently applied by the Respondent authority cannot be treated as illegal and contrary to the provision of several circulars and SORs.

**36.** As far as the applicability of the circular dated 01/10/2019 is concerned, the anchorage fees shall have concessional rate of 50% if the cargo is brought to the berths at Mumbai Port. The relevant extract of the circular is reproduced herein below:

*"MbPT Board has accorded approval for application of Concessional rates in Anchorage charges and amendment in applicable rate for Stream to Stream shifting movement and shifting of Pass Pilot vessel from Lock Gate to berth as given below:*

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***1. Schedule 2.15(A) & (B) – for Anchorage Fees.***

*Concessional rate @ 50% of the rate prescribed at 2.15(A) & (B) will be applicable in case the cargo is brought to the berths at Mumbai Port.".*

**37.** In the present case, it is undisputed fact that the vessel was brought for scrapping in the territory of Mumbai Port Authority. The vessel though might have been brought for scrapping purposes cannot be treated as goods. At no point of time, the barge was treated as cargo and the vessel entered in the Port Authority and was occupying the space and in view of this, submission made by the Applicant to apply the circular dated 01/10/2019, cannot be accepted and is rejected.

**38.** We have also considered the decisions relied upon by the parties. The judgments relied upon by the Applicant, are not applicable in the present case in view of the fact that the vessel in question was never reregistered with the concerned Authority of Government of India.

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Considering above findings, it is our opinion that there is no merit in the application of the Applicant on the grounds raised by the Applicant and hence, the application is dismissed.

**Sd/-**

( **Justice A.J. Desai** )
Presiding Officer.

Place : Mumbai.
Date : 24/09/2026

**Sd/-**

( **Dr. Sanjeev Ranjan** )
Member.

**dt**