

INTERNATIONAL AIRPORTS AUTHORITY OF INDIA ETC. ETC. A

v

M/S GRAND SLAM INTERNATIONAL AND ORS. ETC. ETC.

FEBRUARY 21, 1995

[R.M. SAHAI, S.P. BHARUCHA AND N. VENKATACHALA, JJ.] B

Customs Act—Section 45—Levy of demurrage—Import of goods—Detention for clearance—Goods detained or seized by Customs department—Detention certificate issued by Customs Authorities—Whether any demurrage could have been charged for the period detention certificate was issued—Held, yes. C

The respondents had imported goods by air and filed bills of entry with the Customs authorities. The Customs authorities detained the goods and passed an order enhancing the value of the goods. In appeal, the Custom, Excise and Gold (Control) Appellate Tribunal quashed the order of the Additional Collector; the goods were released and the Collector of Customs issued detention certificates for the periods of the detention stating that the detention was due to pendency of adjudication proceedings. The respondents thereupon applied to the Authority for waiver of demurrage charges for the periods covered by the detention certificates. However, the appellants instead of treating entire period as free period determined the liability of the respondent in accordance with Rate Schedule framed by them for the periods for which the detention certificates had been issued. The respondents filed writ petitions challenging the requirement to pay demurrage for the periods for which the detention certificates had been issued. The High Court, while allowing the petitions held that Airport Authority and the Central Warehousing Corporation being custodian of the Customs Department, the Authority was not entitled to recover any amount on account of demurrage charges for the periods for which detention certificates had been issued. These appeals had been filed against the Judgment and orders of the High Court directing the appellant to release the goods imported by the respondents without charging any demurrage thereon for the periods for which detention certificates had been issued by the Collector of Customs. D E F G

The appellant urged that the power to levy demurrage by the inter- H

A national Airport Authority of India is derived from the International Airport Authority Act, 1971, it could not be regulated or controlled by any order statute; that the Customs Authorities could neither levy demurrage no waive it, therefore, the Detention Certificate could not compel the appellants to treat the entire period during which the goods remained in their custody to be free period and that the rate schedule for demurrage having been made in exercise of statutory power and the appellants have been granted waiver to the extent of 80% under the Policy framed by the IAAI, the respondents were not entitled to any relief.

Allowing these appeals, this Court

C HELD : Per Majority (S.P. Bharucha and N. Venkatachala, JJ. by separate concurring judgments).

The orders passed by the High Court relieving respondent-1 from his liability to pay demurrage charges were liable to be set aside and the D Writ Petition stand dismissed. [199-A, B]

Per S.P. Bharucha, J.

1.1. An importer is liable to pay demurrage though he is not responsible for the delay in clearing his goods. Under the provisions of the International Airports Authority Act, 1971, the International Airports Authority of India are entitled to charge demurrage even in respect of periods during which the importer was unable to clear goods from its premises for no fault or negligence on his part. The Authority was entitled to charge demurrage even in respect of periods during which the importer was unable to clear goods because of the detention thereof by the Customs authorities and also for the period for which a detention certificate had been issued. The Airport Authority is an entity in its own right. By virtue of the power vested in the Authority u/s 37, the Authority has framed regulations called the IAAI (Storage and Processing of Goods) Regulations, 1980. Under the Regulations the Authority is empowered to levy charges, including storage charges and demurrage. The Authority may in its discretion waive charges in deserving cases. The provisions of the International Airports Authority Act, 1971 are similar to the provisions of the Major Port Trusts Act, 1963 and the Port Trusts Act that preceded it and the regulations framed by the Authority u/s 37 of the Act, in regard to the storage or processing of imported goods and the policy in regard to

the waiver of demurrage, are also similar to those of the Boards of Trustees of the ports. A

Trustees of the Port of Madras v. M/s Aminchand Pyarelal and Ors., [1976] 1 S.C.R. 721, *Board of Trustee of the Port of Bombay v. Indian Goods Supplying Co.*, [1977] 3 S.C.R. 343 and *Board of Trustees of the Port of Bombay v. Jain Hind Oil Mills Company and Ors.*, [1987] 1 S.C.R. 932, relied on. B

1.2. None of the provisions of the Customs Act entitle the Collector of Customs to debar the collection of demurrage for the storage of imported goods. They do not entitle him to impose conditions upon the proprietors of ports or airports before they can be approved as Customs ports or Customs airports Section 45 provides that all imported goods imported in a Customs area must remain in the custody of the person who has been approved by the Collector of Customs until they are cleared and such person is obliged not to permit them to be removed from the Customs area or otherwise dealt with except under and in accordance with the permission of the Customs officer. Section 45 does not state that such person shall not be entitled to recover charges from the importer for such period as the Customs authorities direct. [186-G-H, 187-A] C D

1.3. An importer must land the imported goods at a sea-port or airport. He can clear them only after completion of Customs formalities. For this purpose, the sea ports and airports are approved and provide storage facilities and Customs officers are accommodated therein to facilitate clearance. For the occupation by the imported goods of space in the sea-port or airport, the Board or the Authority which is its proprietor is entitled to charge the importer. That until Customs clearance the Board or the Authority may not permit the importer to remove his goods from its premises does not imply that it may not charge the importer for the space his goods have occupied until their clearance. [187-C-D] E F

1.4. It cannot be gainsaid that, by reason of unjustified detention of his goods by the Customs authorities, the importer is put to loss by having to pay demurrage charges for the periods of such detention. The Central Government is empowered by section 35 of the International Airports Authority Act, 1971, and section 111 of the Major Port Trusts Act, 1963, to issue to the Authority and the Board of Trustees, respectively, directions on questions of policy after giving them an opportunity, as far as practi- G H

A able, of expressing their views. The Central Government can, if so advised, after giving to the Authority and the Boards of Trustees the opportunity of expressing their views, direct them not to levy demurrage charges for periods covered by detention certificates. [187-E-H]

B 1.5. The Central Warehousing Corporation is established under the provisions of the Warehousing Corporations Act, 1962. The provisions of the Warehousing Corporations Act are substantially similar to those of the International Airports Authority Act, 1971, and the Major Port Trusts Act, 1963. What has been held in regard to the International Airports Authority applies as well to the Central Warehousing Corporation. [188-B]

C *Per Venkatachala, J. (concurring)*

D 1.1. An authority created under a statute even if the custodian of the imported goods because of the provisions of the Customs Act, 1961 would be entitled to charge demurrages for the imported goods in its custody and make the importer or consignee liable for the same even for periods during which he/it was unable to clear the goods from the Customs area, due to fault on the part of the Customs authorities or of other authorities who might have issued detention certificates owing such fault. [196-H, 197-A]

E 1.2 When the IAAI in exercise of its powers conferred by sub-section (1) of section 37 of the International Airports Authority Act, 1971, and with the prior approval of the Central Government have made regulations called the International Airport Authority (Storage and Preservation of Goods) Regulations, 1980, regulating levy of charge or surcharges, scale of charges and waiver of charges payable by the owner in case of warehoused goods with the IAAI, those Regulations not only do not come in conflict with the Customs Act or its Regulations or its Rules but conform to the requirement of the provision of section 63 of the Customs Act. When in pursuance of the said Regulations policy directions are issued by the IAAI in supersession of earlier instructions on the subject of waiver of demurrage charges on production of detention certificate issued by the Customs authorities showing that detention of goods was for no fault of consignee, it can be safely concluded that any directions issued by Customs Collector contrary to such Regulations and the policy directions as those issued without authority in law are ultra vires his powers. Therefore, condition (vii) in clause (d) of the Customs Public Notice No. 30/86 directing the IAAI not to collect the custody charges in respect of the

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goods for which detention certificates may be issued by the Collector of Customs or his delegatee, has to be regarded as conditions imposed by the Collector of Customs without being conferred any power in that regard either in the Act or the Rules or the Regulations. If condition (vii) of clause (d) of the Customs Public Notice was regarded as that imposed by the Collector or Customs without authority of law, it having been imposed ultra vires his powers under the Act or Rules or Regulations no Court can direct the IAAI to release the goods of the consignee without collecting from him demurrage charges levied according to its Regulations in respect of the goods, which it had taken care of as the custodian merely because there was a detention certificate of the Collector of Customs or his delegatee issued to the IAAI which had been approved as the custodian of such goods by the Collector of Customs under sub-section (1) of section 45 of the Act. [193-G-H, 194-A-E]

13. The IAAI, an authority constituted under the International Airports Authority Act, 1971, when is entitled to collect charges for keeping custody of the imported goods by regulations made thereunder and according to its policy, the Collector of Customs or his delegatee could not direct the IAAI by issuance of a detention certificate to release the goods of the importer without collection of the charges liable to be paid in respect thereof, inasmuch as the Collector of Customs or his delegatee has not been empowered under the provisions of the Act or its Rules or its Regulations to direct release of the imported goods without collection of keeping charges, for the keeping of which by the IAAI, charges are to be paid under the Rules made under the International Airports Authority Act, 1971. [197-C-D]

1.4. Since Central Warehousing Corporation created under warehousing Act, 1962 stands in the same footing as that of the IAAI created under the International Airports Authority Acts, 1971 in the matter of keeping of goods as custodians on behalf of the Customs Department and the entitlement of both of them under the respective Act, Rules and Regulations to levy and collect demurrage charges from the owners or consignees of such goods, not being different, the view taken on the entitlement of IAAI to levy and collect charges for keeping goods by it as custodian on behalf of the Customs Department, equally holds for Central Warehousing Corporation. [197-E-F]

A 1.5. The Collector of Customs empowered under sub-section (1) of section 45 of the Customs Act, 1962 to approve persons to be custodians of imported goods in customs areas until they are cleared as provided for therein, while approving the International Airports Authority of India to be custodian of such imported goods received at the customs area the container Freight Station, CWC Complex, by issue of public notice or otherwise in that regard, if by such notice or otherwise directs such custodians not to collect custody charges from the consignees of such goods - "the Cargo", because of detention certificates issued by him or his delegatee, will not be acting within the powers conferred upon him under the Act, its Rules or its Regulations and hence directions given by the Customs Collector or his delegates to release the goods of importers or consignees without collecting demurrage charge from them cannot be enforced by Courts either against IAAI or CWC. [197-G-H, 198-A-C]

D *Board of Trustees of the Port of Bombay v. Indian Goods Supplying Co.*, [1971] 3 SCR 343; *Trustees of the Port of Madras v. M/s. Aminchand Pyarelal and Ors.*, [1976] 1 SCR 721 and *Board of Trustees of the Port of Bombay v. Jai Hind Oil Mills Co. and Ors.*, [1987] 1 SCR 932, relied on.

Per R.M. Sahai, J. (dissenting)

E 1.1. The provisions in the International Airport Authority Act, 1971 and Regulations framed thereunder cannot be read in isolation so far as the custody of imported goods placed under it by Customs Department is concerned. Both the Customs Act and International Airports Authority Act are central enactments. In either, the Central Government is empowered to make rules to carry out the objective of the Act. Both the legislations are directed towards promoting social welfare. They should be interpreted so as to advance public good and social justice. [167-G-H; 168-A, B]

G 1.2. The Public Notice issued in 1986 in exercise of powers under the Customs Act, directing the appellants not to charge any dues for the period the goods were detained appears to have been issued in the first instance to mitigate the hardship of the importers and therefore, it should be construed so as to remedy the mischief which was intended to be remedied. Apart from that the court's duty while construing two provisions covering the same field is to harmonise the two provisions in such a manner that none of them are rendered otiose. But that would be the result if sub-paragraph (vii) is ignored. The duty of the court is to effectuate the social

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purpose by resorting to such construction as is beneficial and does not cause harm to any one or is rendered self-defeating. [168-E-G] A

1.3. The intention and purport of the Notice is to avoid any harassment and loss to a consignee. It attempts to reconcile the necessity arising out of statutory functions performed by it and yet protects an importer from unintended, and, may be in some cases, unjustified delay in release of goods resulting in huge demurrage. [168-H; 169-A] B

1.4. The expression, otherwise dealt with, in clause (b) of sub-section (2) of Section 45 of the Customs Act widens the ambit of the restriction placed on the custodian. It places complete embargo on the IAAI or CWC to deal with the imported goods in its custody in any manner. The custody by the IAAI or CWC is not as it popularly understood in the commercial sense. It is a statutory custody governed by the provisions of law. Therefore, once rules were framed or Public Notice was issued in exercise of statutory power the IAAI or CWC cannot set up the claim that the intimation issued by the Customs Department could not be taken into account for determination of free days. The issuance of Public Notice would be covered in the expression, otherwise dealt with. When the goods were entrusted in the custody of IAAI it was aware of the Public Notice. It should be deemed to have accepted the custody subject to the condition. In fact the statutory provisions leave no option for IAAI or CWC after 1986 except to act in accordance with the provisions of the Act. The IAAI or the CWC being only custodian of the Customs Department could not ignore the detention certificate issued in exercise of this power. Even on principle of bailment the IAAI or CWC cannot escape from the effect of detention certificate. Once the Customs Department issued directive to release the goods without charging any ground rent in pursuance of public notice issued under Section 45 of the Customs Act, the appellants as bailee could not but to follow the directions which were in accordance with law. The relationship of bailor and bailee arises out of the statutory provision between the Customs Department and the IAAI or CWC and not with the consignee. It does not make the IAAI or CWC a gratuitous bailee. In any case, even if any amount is legally due, the IAAI may claim from Customs Department but not from consignee. [166-B, 169-B-H; 170-A-E] C D E F G

1.5. The adjudicatory process is time consuming. From Assistant Collector of Customs to the Tribunal itself it may take sufficiently long H

A time. By the time the consignee is able to extract himself from the cobweb of various stages he may find himself landed in the soup of demurrage. If he is to pay the charges which in many cases due to passage of time may be many times more than the value of goods, the entire exercise may be waste. It would be anomalous that a person who ultimately succeeds in vindicating his claim that the goods are properly valued or that the import **B** was in accordance with law is faced with demurrage of goods which may be not only more than the value of goods but the value plus duty and penalty even. To remedy from such hardship sub-paragraph (vii) was enacted by way of Public Notice. It recognises the legal consequences which must follow the adjudication by directing that no-demurrage should be **C** charged for that period as in law the decision by the Tribunal dates back to the date of detention. And by fiction of law it is assumed that the Customs Department clears that goods as it should have done when the goods had landed. Even otherwise if the policy decision of capacity to pay is read alongwith rate prescribed then levy of demurrage may defeat the **D** very purpose and objective of the policy. Payment of three times or four times of demurrage of value of goods because the goods were detained at the instance of Customs Authorities does not accord with the policy decision. It is not in common interest. One of the settled principles of construction is to read a provision in such manner that it may not be **E** self-defeating. The levy of demurrage at the prescribed rate by ignoring the Public Notice issued by the Customs Department in 1986 is apt to lead to such disastrous consequences. Even according to the International Airports Authority (Storage & Processing of Goods) Regulations, 1980, the imported goods are under the control of the Customs Department. The **F** Airport Authority acts only as custodian of the goods on behalf of the Customs Department. [174-B-H, 175-A]

2. Legislations, Rules or regulations are enacted to regulate the day to day activities. But they cannot be exhaustive and the practical difficulties arising in working out these have to be resolved by developing principles by the Court which are justice oriented, serve public purpose and promote social interest without doing violence to the language of the Section and the objective of enactment and if the provision was enacted to remedy any event then to construe it in a manner in which it may carry out the objective of the enactment which was intended to suppress the **H** mischief. [168-D-E]

3. From 1976 to 1993 the entire scenario of cargo traffic from air has under gone tremendous change. The busy traffic, the spate of smuggling, manoeuvring of importing goods by camouflaging to avoid payment of duty have multiplied putting immense pressure on the IAAI and the Customs Department. At the same time the honest and bona fide consignee should be protected for sake of credibility. The Customs Department on its part may consider the feasibility of framing a policy by dividing the imported goods in different categories. Where the import is not prohibited or it is against licence or permit and the only dispute is about valuation or the tariff item under which it falls it may be released on furnishing of bank guarantee or security sufficient to secure the interest of Department subject to final decision. This determination should be done at the airport. It would obviate the necessity of storing goods, save the IAAI or CWC from unnecessary botheration, protect the Department and serve the importer better. Till then the Public Notice issued by Customs Department appears to be reasonable and practicable solution to the problem. The IAAI or CWC may be well advised to change its regulations and fall in line with the policy decision and refrain from charging any demurrage for the period Customs Department issues a certificate under sub-paragraph (vii) of the Public Notice. It would avoid litigation, harassment and would be conducive to public interest. [175-B-E]

The Board Trustee of the Port of Bombay v. Indian Goods Supplying Co., [1977] 3 SCR 943, *Board of Trustees of the Port of Bombay v. Jai Hind Oil Mills Company and Ors.*, [1987] 1 SCR 932 and *Trustees of the Port of Madras v. M/s. Aminchand Pyarelal and Ors.*, [1976] 1 SCR 721, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 798 of 1992 Etc. Etc.

From the Judgment and Order dated 24.9.91 of the Delhi High Court in C.W.P. No. 554 of 1991.

V.R. Reddy, Additional Solicitor General, R.F. Nariman, Joseph Vellapalli, V. Shekhar, Atulkumar, Tarun Bajaj, Vinod Kumar, Aruneshwar Gupta, Ranjan Mukherjee, M. J. Paul, Ms. Manjula Gupta, Rajiv Dutta, Ms. Sushma Suri, A. Subba Rao, S.P. Sharma and V.K. Mehra for the appearing parties.

A The following Judgments of the Court were delivered by

B **R.M. SAHAI, J.** International Airports Authority of India (hereinafter referred to as 'IAAI') and the Central Warehousing Corporation, Container Freight Station, Patparganj (in brief 'CWC') obtained leave of this Court under Article 136 of the Constitution of India against direction issued by the High Court of Delhi for release of imported goods without payment of any demurrage charges for the period for which detention certificate had been issued by the Customs Authorities.

C What persuaded the High Court to take this view in favour of the respondents was founded on construction of Section 45(2) of the Customs Act, 1962 ('Act' for short) and issuance of detention certificate by the Customs Authorities. What is the nature of these certificates? Whether they are binding on the IAAI? Is there any conflict in the Public Notice issued by the Customs Authorities and Regulations framed by the IAAI, are some of the questions which arises for consideration in these appeals. **D** But before advertng to these issues facts in brief may be mentioned.

E In Appeal No. 798 of 1992 the respondent filed with the Customs Authorities bill of entry on cargo terminal along with all documents to seek clearance of goods, namely, printing papers etc. of CIF value of Rs. 17,846.00. The valuation given in the bill of entry was objected to by Additional Collector of Customs, and he passed an order on 8th November 1989 enhancing the value of the goods and directing confiscation of the same. In appeal the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi quashed the order of the Additional Collector of Customs on **F** 3rd July 1990. Since the order enhancing the valuation and directing confiscation was quashed the Collector of Customs issued detention certificate from 7.8.1989 to 12.7.1990. It was mentioned in the certificate that the detention was due to case of the respondent pending before the Collector and in the appeal. The respondent thereupon applied for waiver of the demurrage charged for the relevant period. On 18th December 1990 **G** it presented an application showing as 'out of charge' of the Customs. But on 9th January 1991 it was informed by the appellant that the total liability of the demurrage charges was Rs. 1,49,100 out of which Rs. 79, 364 was waived for the period of detention that is, 7.8.89 to 12.7.90. The appellant further condoned the period from 18.12.90 to 9.1.91 as the application for **H** waiver was received and processed during this period. According to the

appellant the respondent was liable to pay Rs. 69,736 as on 9.1.91 and thereafter the liability was Rs. 300 per package per week or part thereof. The liability of the respondent till 12.6.1991 was determined at Rs. 1.15,936.

In Appeal No. 4227 of 1992 the respondent imported a consignment of wool waste. It was seized by the Collector of Customs under Section 110 of the Act as on sample examination it appeared to be synthetic waste which was restricted item which could not be imported without a valid import licence. The respondent was issued notice to show cause why the goods of declared value of Rs. 1,93,237 should not be confiscated under Section 111(d) and 111(m) of the Act and action under Section 112 be taken. The explanation of the respondent that test being based on sample drawn on 10% examination was not correct nor did it represent test of entire consignment, was not accepted. And the respondent was given an option to clear the goods on payment of Rs. 50,000 as fine and in addition penalty of Rs. 1,00,000. In appeal on test of 71% of consignment by the chemical examiner it was held that consignment was wool waste. Consequently the appeal was allowed. And in pursuance of the order of the Tribunal the Additional Collector of Customs passed the order dated 17th December 1990 directing release of the goods. On 24.1.1991 the Assistant Collector sent a letter to the appellant that since the goods of the respondent were seized by Customs Department on 29th April 1986 and they have been directed to be released by the Additional Collector of Customs on 17.12.1990 the, 'demurrage/ground rent and other charges accrued on consignment from 29.4.1986 to 29.12.1990 may be waived'. The appellant replied this letter on 25.1.1991 informing the Assistant Collector of Customs that the matter for waiver of ground rent for the period 31.1.1987 to 29.12.1990 has been referred to the Regional Officer/Head Office. But the Assistant Collector, Customs was requested to inform the importer that they will have to bear entry fee, handling and insurance charges and ground rent after 29.12.1990 in case the Head Office agrees for waiver.

In Appeal No. 3971 of 1992 the respondent had imported multi-cable-transit/cable sealing system. The clearance of goods was claimed under Tariff Item No. 85.47 on payment of duty @ 135.75% The department on the other hand directed it to be cleared by paying duty @ 181.75% under Tariff Item No. 39. However, the claim of the respondent was ultimately accepted. And provisional clearance was granted on payment of demurrage charges. After the claim was accepted the respondent wrote a

A letter to the appellant that since the claim had been accepted by the Customs Authorities and IAAI at the time of release had stated that this question of refund shall be considered after final decision was taken by the Customs Authorities the amount of Rs. 3,26,645 paid towards demurrage may be refunded. But the respondent was informed that the claim of refund was not admissible.

In each of these cases the Customs Department had issued Detention Certificate and informed IAAI and CWC that no demurrage may be charged for the period during which the goods were in custody of IAAI or the CWC due to pendency of adjudication proceedings. But the IAAI or the CWC instead of treating entire period as free period granted rebate and calculated demurrage in accordance with Rate Schedule framed by them. The amount of demurrage in each case came to be two or three times more than the value of the goods, therefore, the respondents approached the High Court by way of writ petitions under Article 226 of the Constitution of India. The petitions were allowed and it was held that the IAAI or the CWC being custodian of the Customs Department could not ignore the Detention Certificate, therefore, no demurrage could be charged for the period the proceedings were pending. The High Court relied on *M/s Trishul Impex v. Union of India* (1991) 2 Delhi Lawyer 1. This decision in its turn relied on an earlier decision given in *Trans Asia Carpets v. Union of India*, CCP No. 97/87. The decision in *Trans Asia* (supra) proceeded on the basis that Airports Authority being an agent of the Collector of Customs was bound by the Detention Certificate granted by the Collector of Customs. In *Trishul Impex* (supra) it was held that the container depot where the goods were deposited being the custodian for Customs Authorities it was bound by the certificate and was liable to release the goods without any demurrage.

It is the correctness of this view that has been assailed in these appeals. The learned counsel for the appellants urged that the power to levy demurrage by the IAAI is derived from the International Airports Authority Act, 1971. It could not be regulated or controlled by any other Statute. It was submitted that the Customs Authorities could neither levy demurrage nor waive it. Therefore, the Detention Certificate could not compel the appellants to treat the entire period during which the goods remained in their custody to be free period. According to learned counsel in any case the Rate Schedule for Demurrage having been made in exercise

of statutory power and the appellants having been granted waiver to the extent of 80% under the Policy framed by the IAAI the respondents were not entitled to any relief. A

The word 'demurrage' defined in clause (g) of Regulation 2 of the Regulations framed by the IAAI is extracted below :

"Demurrage means the rate or amount payable to the airport by a shipper or consignee or carrier for not removing the cargo within the time allowed." B

Similar word used in Port Trust of Madras Act, 1905 came up for interpretation before this Court in *Trustees of the Port of Madras v. M/s. Aminchand Pyarelal & Ors.*, [1976] 1 SCR 721. It was explained that the word was not used in the strict mercantile sense, 'but merely to signify a charge which may be levied on goods after expiration of 'Free days'. This ratio has been reiterated in *The Board of Trustee of the Port of Bombay v. Indian Goods Supplying Co.*, [1977] 3 SCR 343 and *Board of Trustees of the Port of Bombay v. Jai Hind Oil Mills Company & Ors.*, [1987] 1 SCR 932. The dispute, thus is whether the days or period during which adjudication proceedings were pending before the Customs Authorities could be considered to be free days on any principle of law, statutory or otherwise, or it can be held to be so on construction of Regulations and policy framed by the IAAI read with the Act and the Public Notice issued under it. But before coming to it, it appears necessary to state that the basic controversy that arose in *Aminchand Pyarelal* (supra) and *Indian Goods Supplying Co.* (supra) centred round whether a consignee could claim immunity from paying any demurrage when the detention of the goods was not due to any fault or negligence of the importer. It was answered in the negative. In the latter decision that is *Indian Goods Supplying Co.* (supra) the Court after referring to the earlier decision in *Aminchand Pyarelal* (supra) and some English decisions held : C D E F

"The position therefore is that even though the delay in clearing the goods was not due to the negligence of the importer for which he could be held responsible yet he cannot avoid the payment of demurrage as the rates imposed are under the authority of law the validity of which cannot be questioned." G

But that is not the issue in these appeals. The respondents did not claim H

A any immunity from payment of demurrage because their goods were detained for no fault on their part. What was claimed and accepted was that the IAAI or CWC being a custodian of Customs Department the intimation given by it that no demurrage should be charged from the respondent for the period mentioned in the detention certificate should have been accepted and acted upon by it. To examine the correctness of

B this claim it is necessary to ascertain the nature of relationship between the Customs Department and IAAI and notice certain provisions in the Act; the Public Notice issued under it, the Regulations framed by the IAAI and the rate schedule framed by it. Section 45 of the Act reproduced below :

C *"45. Restrictions on custody and removal of imported goods.*

(1) Save as otherwise provided in any law for the time being in force, all imported goods unloaded in a customs area shall remain in the custody of such person as may be approved by the Collector of Customs until they are cleared for home consumption or are

D warehoused or are transhipped in accordance with the provisions of Chapter VIII.

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

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- (a) shall keep a record of such goods and send a copy thereof to the proper officer;
 - (b) shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance
- F with the permission in writing of the proper officer."

This section permits removal of imported goods from the 'customs area' which under clause (11) of Section 2 of the Act means :

G "2. (11) "customs area" means the area of a customs station and includes any area in which imported goods or exported goods are ordinarily kept before clearance by Customs Authorities;"

It is thus clear that the imported goods are kept at the airport or the Warehousing Corporation in the customs area over which it is the Customs

H Department which exercises control. No goods can be removed from there

either by the importer or even the Custodian. The detention is to enable the Customs Department to proceed in accordance with law and determine if the valuation disclosed was correct or the goods had been properly imported etc. A person importing the goods is required to comply with rules and notification issued by the Government permitting, prohibiting or regulating import. Whether the importer is complying with the Rules or not and acting in accordance with law is entrusted to the Customs Department. No goods can be cleared except with permission of the Customs Department. Therefore, it is by operation of the statutory provision that an area specified as customs area is under control of the Customs Department. In fact fictionally it is the Customs Department which for purposes of imported goods, its checking, storage, release etc. is in control of it.

The imported goods are detained in the customs area either for assessment of duty under Section 17(3) and 17(4) of the Act or for clearance under Sections 45 to 47 of the Act. These appeals are concerned with detention for clearance. The levy of demurrage for detention at the instance of Customs Department during adjudication proceedings engaged attention of the Government even in past. In *Indian Goods Supplying Co.'s* case (supra) the Central Government issued a letter requesting the Port Trust Authorities to modify its rates as it was unreasonable to charge an importer any demurrage once it was accepted that clearance was delayed on account of reasons beyond his control. But Since this was only a letter of request and the Board in pursuance of it opted for graded scale the court was of opinion that it could not be treated as a direction binding on the Port Trust.

It appears the Collector or Customs, New Delhi in order to overcome this difficulty and for maintaining and regulating control over goods which are unloaded at Indira Gandhi International Airport, issued Public Notice in 1986 in exercise of powers vested under Sections 8, 33, 34 and 45 of the Act read with Rules 56, 57, 58 and 59 of the Aircraft Rules, 1920. Paragraph (a) of it specifies the limits of customs area as whole of existing area constituting the Indira Gandhi International Airport, New Delhi including domestic arrival and departure area, Cargo Terminal New International Terminal Complex ('CTNITC' for short) and the entire premises of the Central Warehousing Corporation located at Gurgaon Road, New Delhi excluding M/s. IAAI's Import Cargo Warehouse (Monkey torn). Paragraph (b) approves all places where parking/halting of aircraft is permitted by the

A Civil Aviation Department, the International Airport Authority of India for unloading/loading of imported/export goods. Paragraph (c) assigns functions under Sections 33 and 34 of the Act to the officers of the Customs/Air customs posted at IGI Airport. Paragraph (d) approves M/s. IAAI as custodian of the cargo under Section 45 of the Act. The cargo is required to be stored in IAAI's CTNITC subject to the conditions - (i) that the cargo shall be subject to the control or customs; (ii) that M/s IAAI shall maintain detailed account of all imported and exports goods received by them as 'custodian' and shall produce such account for inspection by a gazetted officer or customs.

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C Sub-paragraph (vii) of paragraph (d) which is material reads as under :

D "(vii) In case of goods detained/seized etc. by customs, the warehousing/storage charges shall be calculated by M/s. IAAI for the period due minus the charges for the period of detention at the instance of Customs as certified by the Assistant Collector of Customs".

E The language of the sub-paragraph is clear and unambiguous. Unlike the letter of request sent by Central Government in *Indian Goods Supplying Co.'s* case (supra) it is a direction by the Collector of Customs to the custodian of goods at the airport or the warehouse not to charge any warehousing or storage charges for the period the goods detained or seized by the Customs Department are kept in custody subject to the issuance of a certificate by the Assistant Collector of Customs that the goods were detained at the instance of Customs Department. But what was urged by the learned counsel for the appellants was that this Public Notice was not binding on the appellants as they were independent statutory bodies. To examine the merit of this submission, the question that arises is whether the Notice was issued in valid exercise of power. If it be so then what consequence flow out of it? It will then have to be examined whether it is binding on the appellants. And lastly even if it is not binding the Public Notice issued by the Collector of Customs and rate schedule framed by the appellants being parallel legislation occupying the same field how should they be construed? The validity of the Notice was not challenged by the appellants. As a matter of fact it was not adverted to either by the High Court nor any reliance was placed on it by the respondents. But reference

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of it was found in one of the decisions rendered by the High Court and thereafter on our request, the learned counsel for the appellants supplied copies of it. Even when the appeals were listed for further hearing the learned counsel for the appellants did not urge and probably rightly that it was issued in violation of statutory power or the Collector of Customs exceeded its jurisdiction yet it appears necessary to trace the source of power of this Notice as it shall have important bearing on the legal effect of it. It purports to have been issued under sections 8, 33, 34 and 45 of the Act and Rules 56 to 59 of the Aircraft Rules, 1920. Each paragraph of the Notice appears to have been issued to carry out the purpose of the Sections mentioned in it. For instance, Section 8 of the Act empowers the Collector to approve proper places in the airport for unloading of goods and clause (b) of it empowers the Collector to specify the limits of customs area. Paragraph (a) of the Notice achieves this purpose. Paragraphs (b) and (c) of the Notice have been issued to carry out the objective of Sections 33 and 34 of the Act and Rules 57 to 59 of the Aircraft Rules which provide for unloading of goods at approved places with permission of the proper officer of the Customs Department. Paragraph (d) and its various subparagraphs achieve the objective of Section 45 by spelling out details of restriction subject to which the custodian may carry out its activities of warehousing imported goods. It is thus obvious that the Notice was issued to carry out purposes of the Act. Section 156 empowers the Central Government to frame rules and Section 157 empowers the Board to make regulations consistent with the Act to carry out the purposes of the Act. Section 152 empowers the Central Government to issue notification that any power exercisable by the Board under the Act may be exercised by the Collector of Customs. It is not claimed that no notification was issued by the Central Government empowering the Collector to exercise the powers of the Board. Therefore, the Collector could exercise the same power as the Board. Consequently, the Notice issued by him cannot be said to be invalid. It must be assumed to have been issued in exercise of powers under Section 157 to carry out the purposes of the Act.

The next question is what is the consequence of it. Clause (b) of sub-section (2) of Section 45 of the Act extracted earlier provides that the persons having custody of the imported goods in customs area, that is, IAAI or CWC shall not permit such goods to be removed from the Customs area or otherwise deal with except in accordance with the permission in writing of the proper officer. The word 'otherwise' is defined in

- A *Standard Dictionary* to mean, 'in a different manner in another way'. In Webster Dictionary it is defined to mean, 'in a different manner, in other respects'. The expression, 'otherwise dealt with', therefore, widens the ambit of the restriction placed on the custodian. It places complete embargo on the IAAI or CWC to deal with the imported goods placed in its custody in any manner. The two restrictions that is prohibition to remove goods and dealing with it in any manner otherwise completely debar the custodian from exercising any right or control except with the permission of the proper officer of Customs Department. No discussion is needed to explain the expression that the custodian of the goods shall not be entitled to remove the imported goods but it appears necessary to explain the scope of expression 'otherwise dealt with'. How it has to be understood in the context in which it has been used? That would obviously depend on the nature of functions of the custodian in respect of imported goods. Section 16 of the International Airports Authority Act, 1971 is the only Section which lays down the functions which are required to be performed by the IAAI. Clause (d) of sub-section (3) of Section 16 empowers the IAAI to establish warehouses at the airport for the storage or processing of goods. This would include providing for levy of charges for storing of goods, handing it, insurance etc. And on failure to pay the charges to dispose of the goods. The IAAI has in fact framed Regulations to carry out its functions of warehousing. It shall be adverted to later. But in view of clause (b) sub-section (2) of Section 45 of the Act it cannot deal with goods placed in its custody in any manner except with the permission of the Customs Department. The function of the appellants in respect of warehousing of the goods would, thus, be covered in the expression, 'otherwise dealt with' used by clause (b) of sub-section (2) of Section 45 and, therefore, the appellant could not deal with the imported goods or perform any function without obtaining an order in writing by the proper officer. This would obviously include the right of the appellants to sell the goods for non-payment of demurrage. This is the appellants even though independent statutory bodies are precluded from dealing with the goods or selling it without obtaining permission of the proper officer. This restriction on the right and power of the appellants has been statutorily regulated by issuing Public Notice. It does not interfere with the right of the appellants to frame their rate schedule and charge demurrage. Nor does it interfere with right to charge dues for keeping the goods in the warehouse. It only provides that where the goods have been detained or seized at the instance of the

Customs Department the dues might be calculated minus this period. This could have been done by the Central Government or the Board or the Collector. Therefore, the issuance of Public Notice directing the appellants not to charge any dues for the period the goods were detained would be covered in the expression, 'otherwise dealt with'. It is further strengthened by Section 150 of the Act which lays down precedence for sale of goods which are not confiscated. The payments to the Custodian under clause (d) of sub-section (2) of the Section is to be made only after meeting the expenses of sale, freight and duty. The appellants could not, therefore, ignore sub-paragraph (vii) of paragraph (d) of the Notice. It is no more a request by the Central Government but an exercise of power by the appropriate authority under the Statute. It is not inconsistent with any provision of the Act.

It would not be out of place to mention that Chapter IX of the Act deals with warehousing. Section 63 of the Act falls in it. It deals with payment of rent and warehousing charges. Sub-section (1) of it requires the owner of any warehoused goods to pay to the warehouse-keeper rent and warehouse charges at the rates fixed under any law for the time being in force or where no rates are so fixed, at such rates as may be fixed by the Collector of Customs. Sub-section (2) of Section 63 empowers the warehouse-keeper to sell the goods if the dues are not paid within ten days from the date it becomes due. But the right can be exercised only with permission of the proper officer. Therefore, it cannot be legitimately urged that the Customs Department could not issue a Notice which would affect the right of appellants to fix charges etc. The Public Notice issued in 1986 does not interfere with rate schedule of the appellants but it only fixes free period or period during which no rent can be charged in exercise of statutory power. The International Airports Authority Act, 1971 does not preclude the Customs Department expressly or impliedly from framing any such regulations.

What is apparent from a study of these various Sections of the Act is that the provisions in the International Airports Authority Act, 1971 and Regulations framed thereunder cannot be read in isolation so far as the custody of imported goods placed under it by Customs Department is concerned. If sub-paragraph (vii) of the Notice is understood, as urged by the learned counsel for the appellants, as having no effect on the appellants as they are statutory bodies then it would result in rendering the Notice as

A dead letter or waste paper or it would create conflict between two parallel provisions in two different statutes dealing with same subject. That would not be in consonance either with principles of interpretation or construction. Both the Act and International Airports Authority Act are central enactments. In either, the Central Government is empowered to make rules to carry out the objective of the Act. Both the legislations are directed towards promoting social welfare. They should be interpreted so as to advance public good and social justice.

"Just as the different words, phrases and provisions of a statute should not be isolated and given an abstract meaning, so the statute itself in its entirety should not be interpreted solely by reference to its own terms, but rather by reference to the other laws of the state, and particularly to those pertaining to the same subject". Crawford's, *Interpretation of Laws*, 1989 p. 420.

Legislations, rules or regulations are enacted to regulate the day to day activities. But they cannot be exhaustive and the practical difficulties arising in working out these have to be resolved by developing principles by the court which are justice oriented, serve public purpose and promote social interest, of course, without doing violence to the language of the Section and the objective of enactment and if the provision was enacted to remedy any event then to construe it in a manner in which it may carry out the objective of the enactment which was intended to suppress the mischief. The Notice appears to have been issued in the first instance to mitigate the hardship of the importers and therefore it should be construed so as to remedy the mischief which was intended to be remedied. Apart from that the court's duty while construing two provisions covering the same field is to harmonise the two provisions in such a manner that none of them are rendered otiose. But that would be the result if sub-paragraph (vii) is ignored. The duty of the court is to effectuate the social purpose by resorting to such construction as is beneficial and does not cause harm to any one or is rendered self-defeating. How such construction shall be self-defeating shall be explained later.

Further, the intention and purport of the Notice is to avoid any harassment and loss to a consignee. It attempts to reconcile the necessity arising out of statutory functions performed by it and yet protects an importer from unintended and, may be in some cases, unjustified delay in

release of goods resulting in huge demurrage. For instance in these very appeals the demurrage charges are three to four times of value of the goods. And that too when it has been found that delay was due to adjudication proceedings. It is to overcome this practical difficulty yet statutory necessity that the Customs Department issued Public Notice in 1986. The IAAI or the CWC being only custodian of the Customs Department could not ignore the detention certificate issued in exercise of this power. No such Public Notice issued in exercise of power under Section 45 of the Act arose for consideration in the earlier cases. In *Aminchand Pyarelal* (supra) the decision turned on validity of bye-laws framed by the Port Trust. Clause 13(b) of it provided for graded charges for the period goods were detained on account of Import Trade Control Formalities. It was held by the High Court to be *ultra vires* as charging demurrage for period when consignee was not at fault was unreasonable and unwarranted. It was this view of the High Court which was reversed as the bye-laws had been framed by a Port Trust whose members were representatives including a Customs Officer. The Court found after examining Section 109 of the Act that levy of graded demurrage was neither arbitrary nor unreasonable. In the other decision that is *Indian Goods Supplying Co.* (supra) the Court accepted the claim of the Port Trust that it being entitled to claim demurrage under the contract entered with the consignee the same could not be denied to it unless it was found that the delay in release of the goods was due to conduct of the Port Trust. Therefore, the ratio of these decisions is not helpful in deciding the effect of detention certificate issued by the Assistant Collector of Customs under the Public Notice issued under Section 45 of the Act. When the goods were entrusted in the custody of IAAI it was aware of the Public Notice. It should be deemed to have accepted the custody subject to the condition. In fact the statutory provisions leave no option for the IAAI or CWC after 1986 except to act in accordance with the provisions of the Act. The custody by the IAAI or CWC is not as it is popularly understood in the commercial sense. It is a statutory custody governed by the provisions of law. Therefore, once rules were framed or Public Notice was issued in exercise of statutory power the IAAI or CWC cannot set up the claim that the intimation issued by the Customs Department could not be taken into account for determination of free days. Even on principle of bailment the IAAI or CWC cannot escape from the effect of detention certificate. Clause (6) of Procedures and Tariff of CWC provides that subject to above terms and conditions, the rights and

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- A liabilities of the Corporation shall be as that of a bailee. A bailment under Section 148 of the Indian Contract Act, 1872 means 'delivery' of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the persons delivering them'. Here the goods were handed over to the IAAI or CWC for the statutory purpose contemplated by Section 45 of the Act. The goods were to be returned after completion of proceedings as directed by the Customs Department. Section 160 of the Contract Act specifically provides for the bailee to return or deliver the goods according to the bailor's directive. The direction not to charge any demurrage does not result in making the IAAI as a gratuitous bailee as the IAAI is entitled to charge insurance charges, handling charges and demurrage except the dues mentioned for the period in the detention certificate. Therefore, once the Customs Department issued directive to release the goods without charging any ground rent in pursuance of Public Notice issued under Section 45 the appellants as bailee could not but to follow the directions which were in accordance with law. The relationship of bailor and bailee arises out of the statutory provision between the Customs Department and the IAAI or CWC and not with the consignee. It does not make the IAAI or CWC a gratuitous bailee. In any case, even if any amount is legally due, the IAAI may claim from Customs Department but not from consignee.

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- The Regulations framed by the IAAI may now be examined. The IAAI has framed International Airports Authority (Storage & Processing of Goods) Regulations, 1980 in exercise of the powers conferred by subsection (1) of Section 37 of the International Airports Authority Act, 1971, 1971 (43 of 1971). Clause (g) of Regulation 2 of the Regulations defines 'demurrage' which has been extracted earlier. Regulation 4 empowers the IAAI to levy charges/surcharges which may include terminal charges, storage charges, handling charges, demurrage, charges to cover insurance. Regulation 5 empowers the authority to fix and revise from time to time scale of charges referred to in the Regulations. Regulation 6 empowers the Chairman to waive the charges in deserving cases for reasons to be recorded by him. He is further empowered to delegate his powers to Director of Cargo and Airport General Manager.

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Regulation 8 is extracted below :

"Charge of cargo - The cargo will be stored in the International Air Cargo Complex under the control and supervisions of Customs Authorities. While the Authority would be the custodian of the import Cargo delivered to it by the carriers the responsibility for export cargo would be that of the shipper or his agent before customs examination, of the Customs in respect of detained cargo during examination and of the carries after customs examination."

Even according to these regulations the imported goods are under the control of the Customs Department. It acts only as custodian of the goods on behalf of the Customs Department. It is not the agent of the consignee. Once the aircraft lands and the goods are handed over to the consignee the agreement between the carrier and consignee comes to an end and thereafter inspection by the Customs Department, its detention and direction to store in the 'specified area' till the adjudication proceedings are over are statutory powers exercised under the Act. The IAAI has no option. It cannot refuse inspection nor can it refuse to keep the imported goods. There is no material difference in the rules framed by the Customs Department, the Public Notice issued by it and the regulations framed by the IAAI. The IAAI is custodian under either of the Customs Department. Therefore it could not ignore the notice or the letter issued by the Assistant Collector of Customs in pursuance of it. As regards CWC it has not only been appointed custodian under Section 45(11) of the Act but the Public Notice issued in November 1984 provides that it, 'would be required to comply with the provisions of Section 45(2) of the Act *ibid* as well as rules and regulations and instructions issued from time to time on the subject mentioned above'.

In pursuance of Regulation 6 IAAI has framed a policy of waiver of demurrage charges. It is framed on principle of 'capacity to pay'. Paragraph 2 of the Policy incorporates the general principles. It divides the cargo imported for purpose of free period into there classes; (1) commercial, (2) unaccompanied baggage, and (3) non-commercial cargo. It allows seven calendar days from the date of landing as free period to commercial and non-commercial cargo whereas the unaccompanied baggage is allowed 14 days. Clause (d) provides that unscheduled holidays declared by Central Government would be considered as free period. And clause (e) allows as free period the period of processing application for waiver of demurrage. It further allows three days for postal communication as free period. But

A Paragraph 3 provides that beyond the period mentioned in Paragraph 2, the cargo may be entitled to remission of demurrage in the circumstances mentioned therein. Paragraph 3.1. provides that wherever detention certificate is submitted from the competent authority that the detention of the goods was for no fault of consignee, then the consignee shall be entitled to demurrage on the scale mentioned in sub-paragraphs (a) to (g). Clause (a) deals with detention of goods by the Customs in connection with I.T.C. formalities. It provides for 80% waiver for first 90 days, 50% thereafter for six months and full charges thereafter. Clause (b) permits 80% waiver for period under detention in transfer, 'of residents appeal where the appellate authority decides the case in favour of the consignee without imposing any penalty'. And clause (c) allows 80% waiver for full period of detention where the detention certificate shows that detention was by, 'customs for analytical purposes, such detention should be for specific Analytical Test by Customs Control Laboratory or Central Drugs Control Laboratory.' This policy was framed by the IAAI in 1979 whereas the Public Notice was issued in 1986. For purposes of detention of imported goods by the Customs Department at Indira Gandhi International Airport, therefore, Paragraph 3.1. has to be read that where detention certificate has been issued by the Customs Authorities in accordance with sub-paragraph (vii) of the Public Notice no demurrage shall be charged for the period mentioned in it.

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Same is the result even if the policy framed by the IAAI is examined from another aspect. The definition of 'demurrage' has already been extracted. It mentions the rate or amount payable by the consignee for not removing the cargo within the time allowed. The regulation do not throw any light on the expression 'within the time allowed'. Paragraph 3 of the Regulations provides the procedure to be followed for the storage and processing of the goods in the International Air Cargo Complex at the airport. Clause (b) relates to imported goods. It provides that the goods shall be received by the officials of the Authority/Ground Handling agency from the carrier in the presence of Customs officials. The consignee will be responsible for getting his consignment examined by Customs and obtaining 'out of charge' endorsement. It further provides that the officials of the Authority will deliver the consignment to the consignee after collecting demurrage and obtaining a valid receipt from him. The demurrage has to be calculated in accordance with the policy framed by the IAAI. The free days for which no demurrage shall be charged has already been

explained. The time to calculate demurrage commences, according to paragraph 2 of the policy, from the date of landing after excluding free days. When Public Notice requires the IAAI and CWC not to charge any rent for the period detention certificate is issued then by operation of law the expression 'within the time allowed' in the policy has to be read along with the detention certificate issued by the Customs Department. The High Court appears to be right in taking the view that if various clauses in the Public Notice issued by the Customs Department are followed by the IAAI then there appears no rationale for the view that sub-paragraph (vii) is not binding on them as they have framed their own rate schedule. Any other construction would result in rendering sub-paragraph (vii) as meaningless. The learned counsel for the appellants submitted that it acted on the certificate and that is why it granted waiver of 80%. But that is not what sub-paragraph (vii) requires. It specifically provides for charging no demurrage for the period mentioned in the detention certificate. Therefore, the IAAI or CWC should not have levied any charge for the period mentioned in the detention certificate. In fact in clauses (b) and (c) of the Policy 80% waiver is allowed on account of court cases where court has passed unconditional order in favour of the consignee. The Policy further provides that, 'all the waiver in terms of powers (a) above shall be subject to condition that respective authority certifying detention has not levied any fine penalty or issued any warning to the consignee on this import'. On a reasonable construction of the Policy, therefore, there would have been no difficulty in accepting the claim of the respondents for waiver of 80% during the entire period of detention. An importer may be entitled to waiver in more than one clause. In a case where appeal is allowed in entirety and no penalty or fine is imposed the consignee might be entitled to waiver both under clauses (a) and (g), therefore, the demurrage may not be chargeable more than 80% in such cases for the entire period of detention.

The issue, however, is not whether 80% for the entire period of detention should have been waived but whether any demurrage could have been charged for the period detention certificate was issued by the Assistant Collector of Customs. If the appellants' claim that IAAI being a statutory body it was entitled to frame its regulations and rate schedule is accepted then it results in conflict between sub-paragraph (vii) of Public Notice and paragraph (3) of the Policy framed by the IAAI. The legislative intention in enacting Act being to check and control economic offences

A such as smuggling, illegal import etc., the provisions have to be construed to advance the purpose sought to be achieved without sacrificing the consignee's interest. The provisions in the International Airports Authority Act and the Policy framed thereunder cannot be construed so as to be self-defeating. But that would be the result if the construction suggested by the appellants is accepted. The adjudicatory process is time consuming.

B From Assistant Collector of Customs to the Tribunal itself it may take sufficiently long time. By the time the consignee is able to extract himself from the cobweb of various stages he may find himself landed in the soup of demurrage. If he is to pay the charges which in many cases due to passage of time may be many times more than the value of goods, the entire exercise may be waste. It would be anomalous that a person who ultimately succeeds in vindicating his claim that the goods are properly valued or that the import was in accordance with law is faced with demurrage of goods which may be not only more than the value of goods but the value plus duty and penalty even. For instance in Appeal No. 798 of 1992 the total value of the goods was Rs. 17,846 whereas the demurrage after allowing rebate as provided in the Rate Schedule of the IAAI comes to Rs. 1,15,936. If this amount is not paid the only remedy of the IAAI would be to dispose of the imported goods and the total value it might be able to realise could be somewhere near Rs. 17,000. Therefore, except for the satisfaction of auctioning the goods the IAAI in some cases may not be able to compensate itself fully. And yet the consignee stands deprived of his goods. The construction as has been suggested by the appellants would, therefore, be unjust to small importers, and as observed self-defeating for the IAAI or CWC. To remedy from such hardship sub-paragraph (vii) was enacted by way of Public Notice. It recognises the legal consequences which must follow the adjudication by directing that no demurrage should be charged for that period as in law the decision by the Tribunal dates back to the date of detention. And by fiction of law it is assumed that the Customs Department clears the goods as it should have done when the goods had landed. Even otherwise if the policy decision of capacity to pay is read along with rate prescribed then levy of demurrage may defeat the very purpose and objective of the policy. Payment of three times or four times of demurrage of value of goods because the goods were detained at the instance of Customs Authorities does not accord with the policy decision. It is not in common interest. One of the settled principles of construction is to read a provision in such manner that it may not be self-defeating. The

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levy of demurrage at the prescribed rate by ignoring the Public Notice issued by the Customs Department in 1986 is apt to lead to such disastrous consequences. A

But before parting it is necessary to observe that from 1976 to 1993 the entire scenario of cargo traffic from air has gone tremendous change. The busy traffic, the spate of smuggling, manoeuvring of importing goods by camouflaging to avoid payment of duty have multiplied putting immense pressure on the IAAI and the Customs Department. At the same time the honest and *bona fide* consignee should be protected for sake of credibility. The Customs Department on its part may consider the feasibility of framing a policy by dividing the imported goods in different categories. Where the import is not prohibited or it is against licence or permit and the only dispute is about valuation or the tariff item under which it falls it may be released on furnishing of bank guarantee or security sufficient to secure the interest of Department subject to final decision. This determination should be done at the airport. It would obviate the necessity of storing goods, save the IAAI or CWC from unnecessary botheration, protect the Department and serve the importer better. Till then the Public Notice issued by Customs Department appears to be reasonable and practicable solution to the problem. The IAAI or CWC may be well advised to change its regulations and fall in line with the policy decision and refrain from charging and demurrage for the period Customs Department issues a certificate under sub-paragraph (vii) of the Public Notice. It would avoid litigation, harassment and would be conducive to public interest. B C D E

In the result, all the appeals fail and are dismissed.

BHARUCHA, J. C.A. Nos. 798/92 & 3971/92. F

These are appeals by special leave against the judgments and orders of a Division Bench of the High Court of Delhi allowing the writ petitions filed by the first respondents in each appeal and directing the appellant, the International Airport Authority of India (the Authority), to release the goods imported by the first respondents without charging any demurrage thereon for the periods for which detention certificates had been issued by the Collector of Customs. G

The first respondents had imported goods by air and filed bills of entry with the Customs authorities at the Delhi airport, which is the H

- A property of the Authority. The Customs authorities detained the goods. Ultimately, they were released and the Collector of Customs issued detention certificates for the periods of the detentions. The first respondents thereupon applied to the Authority for waiver of demurrage charges for the periods covered by the detention certificates. The first respondents calculated demurrage, granting for these periods waiver on a graded scale.
- B The first respondents preferred writ petitions before the Delhi High Court, impleading the Union of India and the Authority, challenging the requirement to pay demurrage for the periods for which the detention certificates had been issued. The High Court took note of the decision of an earlier Division Bench in the case of *M/s. Trishul Impex v. Union of India*, (1991) 2 Delhi Lawyer 1 = 43 Delhi Law Times 538. The High Court took the view that since the Authority was the custodian on behalf of the Customs authorities, the Authority was not entitled to recover any amount on account of demurrage charges for the periods for which detention certificates had been issued.
- D The judgments and orders under appeal are contrary to the judgment of the Delhi High Court in the case of *M/s Trishul Impex* (ibid) as also the decisions of this Court in the cases of *Trustees of the Port of Madras v. M/s Aminchand Pyarelal & Ors.*, [1976] 1 S.C.R. 721; *Board of Trustee of the Port of Bombay v. Indian Goods Supplying Co.*, [1977] 3 S.C.R. 343 and *Board of Trustees of the Port of Bombay v. Jai Hind Oil Mills Company & Ors.*, [1987] 1 S.C.R. 932.

- F In the case of *Trishul Impex* (ibid) a writ petition filed by an importer had been allowed and the Union of India and the Container Corporation of India were directed to issue a detention certificate from the date on which a bill of entry was filed until the date of actual clearance and to release the imported goods without payment of demurrage charges. The Corporation, the 5th respondent, filed an application before the High Court in which a declaration was sought that the liability for the demurrage charges would have to be borne by the importer. The Division Bench that heard the application came to the conclusion that the Corporation was the custodian of the goods under section 45(2) of the Customs Act. As a detention certificate had been issued by the Customs authorities, the Corporation was bound to release the goods to the importer and it was the Customs authorities who were responsible to the Corporation for the demurrage charges. The Corporation was, therefore, directed to release
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the goods to the importer upon payment by the Customs authorities of the demurrage charges for the period covered by the detention certificate. A

In the case of *M/s. Trishul Impex*, therefore, it was held that the authority in whose premises the goods were held pending their clearance by the Customs authorities was entitled to recover demurrage charges for the period that they were so held, but that, since such detention had been at the insistence of the Customs authorities and such insistence had been acknowledged to be wrongful, it was the Customs authorities who should pay the demurrage charges for that period to the authority holding the goods and upon such payment the authority should release the goods to the importer. The writ petitions filed by the first respondents before the Delhi High Court impleaded the Union of India and the Authority. The High Court did not direct the Union of India to pay to the Authority demurrage charges for the periods covered by the detention certificates, as had been done in the case of *M/s. Trishul Impex*, but directed the Authority to release the goods without payment of demurrage charges. B
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In *Trustees of the Port of Madras v. M/s. Aminchand Pyarelal & Ors.*, [1976] 1 S.C.R. 721, a detention certificate was issued by the Customs authorities stating that the detention of imported goods for the period 24th April, 1963, to 21st August, 1964, was due to no fault or negligence on the part of the importer. Acting upon the detention certificate, the appellants, the Trustees of the Port of Madras (the Board), waived demurrage for the period covered thereby and charged Rs. 1963, instead of Rs. 3,20,951, by way of demurrage. The importer paid Rs. 1963 and cleared the goods. In January, 1965, the Board wrote to the Customs authorities stating that the detention certificate had been erroneously issued. The Customs authorities owned the mistake. The Board then sued the importer, the Union of India and the Customs authorities to recover the balance of the demurrage charges. The importer disputed its liability to pay on the ground that it could not be penalised either for the delay caused by the Customs authorities in clearing the goods or by reason of a wrong detention certificate. The High Court dismissed the suit. It held, *inter alia*, that the Board could not charge demurrage for the period during which the goods had been detained for no fault or negligence of the importer or his agent, demurrage being, in its view, a charge for wilful failure to remove goods. The Board approached this Court in appeal. This Court noted the provisions of the Madras Port Trust Act and, particularly, the provisions E
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A of sections 42, 43 and 43A thereof. Section 42 empowered the Board to frame a scale of rates at which and a statement of the conditions under which the services specified therein would be performed by the Board. One of the clauses thereof referred to landing of goods from any vessel upon any land or building in the possession or occupation of the Board or at any place within the limits of the Board. Another referred to wharfage, storage or demurrage of goods at any such place. By reason of section 44, every scale and every statement of conditions framed by the Board under sections 42, 43 and 43-A had to be submitted to the Central Government for sanction and, when so sanctioned and published in the Official Gazette, had the force of law. Section 44 (1a) empowered the Central Government to cancel any of the scales framed by the Board and to call upon the Board to modify any portion thereof. The Board was bound to comply with such directions. Section 44(2) conferred power upon the Board in special cases, for reasons to be recorded in writing, to remit the whole or any portion of the rates or of any charge leviable according to any scale. Acting in pursuance of the powers conferred by sections 42, 43 and 43A, the Board had framed a scale of rates payable at the Port of Madras which had been duly sanctioned by the Central Government. Chapter IV in Book I thereof dealt with demurrage. Demurrage was defined as "chargeable on all goods left in the Board's transit sheds or yards beyond the expiry of the free days. After demurrage begins to accrue no allowance is made for Sundays or Board's holidays. The free days are fixed by the Board from time to time". Scale 'A' of Chapter IV prescribed conditions governing 'free days', the normal rule being that three working days in the case of foreign cargo, excluding Sundays and the Board's holidays, were treated as free after complete discharge of a vessel's cargo or the date when the last package was put overboard. Free periods also included periods during which goods were detained by the Customs authorities for a chemical test, which period was certified by them to be not attributable to any fault or negligence on the part of importers. Rule 13 (b) read thus :

G "(b) where goods are detained by the Collector of Customs, on account of Import Trade Control formalities or for compliance of formalities prescribed under the Drug's Act and certified by the Collector of Customs to be not attributable to any fault or negligence on the part of Importers, demurrage shall be recovered for this period at the rate of 30 per cent of the normal rate, i.e. the rate at which the goods would incur demurrage had there been no

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detention by the Customs, this concession in demurrage shall be limited to a period of 30 days plus one working day and demurrage shall be recovered at the full rate (i.e. third slab) for detention beyond the above said period."

This Court held that Port Trusts were bodies of a public representative character which were entrusted by the legislature with authority to frame a scale of rates and statement of conditions subject to which they would perform certain services. Every scale and every statement of conditions had to be submitted by the Board to the Central Government for sanction and it was only when it was so sanctioned that it had the force of law. The requirement of such sanction was a restraint on unwise, excessive or arbitrary fixation of rates. Section 44(2) conferred on the Board the power, in special cases and for reasons to be recorded in writing, to remit the whole or any portion of rates or charges leviable according to any scale in force. Port Trusts did not do the business of warehousing goods and the rates which the Boards charged for storage of goods were not levied as a means of collecting revenue. The Board was under a statutory obligation to render services of various kinds and those services had to be rendered not for the personal benefit of this or that importer but in the larger national interest. Congestion in the ports affected free movement of ships and of essential goods. The scale of rates had therefore to be framed in a manner which would act both as an incentive and as a compulsion for the expeditious removal of goods from the transit area. Ships, like wagons, had to be kept moving and that could happen only if there was pressure on the importer to remove goods from the Board's premises with the utmost expedition. Section 42 had not authorised the Board to fix rates of "demurrage" but to frame scales of rates and a statement of conditions under which the services specified therein would be performed. The ordinary meaning of "demurrage" did not, therefore, fetter the Board's powers under section 42. The High Court was, therefore, found to be in error when it held that the Board's power to charge demurrage was limited to cases where goods were not removed from its premises due to some fault or negligence on the part of the importer.

In Board of Trustees of the Port of Bombay v. Indian Goods Supplying Co., [1977] 3 S.C.R. 343, the appellant Board had framed scales of rates of demurrage of goods under its statute, which was similar in its terms to the statute that covered the Port of Madras. The Board claim demurrage and,

A as the amount thereof was not paid, the goods in respect of which the claim was made were sold by public auction. The importer filed a suit for the recovery of the value of the goods; the Board denied the liability and pleaded that it was entitled to collect demurrage and, since the importer had failed to pay the demurrage, it was entitled to sell the goods by auction.

B The City Civil Court at Bombay decreed the suit and the High Court in appeal affirmed the decree. The Board appealed to this Court. This Court said that under its statute it was the duty of the Board to recover rates. It had a lien on the goods and the right to seize and detain them until rates were fully paid; also, to sell the goods to enable recovery. The contention on behalf of the importer was that it was in no way responsible for the

C delay in clearing the goods as the goods had been detained under the Import Trade Control Regulations. This Court said :

D "It is no doubt true that before clearance is given by the Import Trade Control authorities and the Customs Department the goods cannot be cleared by the respondents. Neither can the Port Trust deliver the goods without the consent of the Import Trade Control authorities. Taking into account the hardship caused to the importer because of the delay certain concessions in demurrage rates are permitted. The Port Trust has prescribed the reduced demurrage levy which is 1/6th of the normal rate from the date of expiry of the free days upto the 60th day, 1/3rd of the normal rate after the expiry of the 60th day, upto the 90th day, half the normal rate after the expiry of 90th day upto the 120th day, 2/3rd of the normal rate after the expiry of the 120th upto the 150th day and at the full rate after the expiry of the 150th day. As the scale of rates are framed by virtue of the statutory powers conferred on the Board

E under section 43 and as the rates have been approved by the Central Government under section 48B the rates have the force of law and cannot be questioned. Taking into account the hardship to the importers certain concession has been given but the legality of the rates which are being levied according to law cannot be

F questioned."

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This court then referred to the aforementioned judgment in the case of *M/s. Aminchand Pyarelal* and said that it was on all fours with the facts of the case before it and concluded the question. It was held that the High

H Court was in error in holding that the importer of the goods could not be

held responsible for any delay not attributable to his own default and that demurrage under the statute could never be imposed as long as the goods were detained for the purpose of the operation of the Import Trade Control Regulations. A

In *Board of Trustees of the Port of Bombay v. Jai Hind Oil Mills Co. & Ors.*, [1987] 1 S.C.R. 932, the provisions of the Major Port Trusts Act, 1963, were involved and it was found that they were in para materia with the provisions of the individual Port Trusts Acts that preceded it. Reliance was placed upon the judgments in the cases of *M/s Aminchand Pyarelal and Indian Goods Supplying Co.*, and it was held : B

"The power of a Port Trust to fix rates of demurrage and to recover the same from an importer or exporter (although the question of an exporter paying demurrage arises rarely) under law and to show concession as regards demurrage charges in certain specified cases is recognised by the Court in the *Trustees of the Port of Madras v. M/s Aminchand Pyarelal & Others*, [1976] 1 S.C.R. 721 and in the *Board of Trustees of the Port of Bombay v. Indian Goods Supplying Co.*, [1977] 3 S.C.R. 343. These decisions are no doubt based on the relevant laws which were in force at the material time. But the decisions are still relevant insofar as cases arising under the Act because the Act also contains provisions more or less similar to the statutory provisions considered in the said decisions. Demurrage charges are levied in order to ensure quick clearance of the cargo from the harbour. They are always fixed in such a way that they would make it unprofitable for importers to use the port premises as a warehouse. It is necessary to do so because congestion in the ports affects the free movement of ships and the loading and unloading operations. As stated earlier, the Port Trust shows concession to the party concerned in certain types of cases. C
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It is, however, to be observed that before compelling the Customs authorities to issue a Detention Certificate, the High Court should have issued notice to the Port Trust which was vitally interested in securing its own interests as regards the demurrage charges recoverable by it under law. This was necessary because on the production of the Detention Certificate issued by the Customs G
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A authorities the Port Trust was under an obligation to permit the clearance of the goods without payment of full demurrage charges. If ultimately the party concerned is found to be at fault and becomes liable to pay the full demurrage charges the Port Trust may not be in a position to recover such full demurrage charges from the party concerned, since it would have no longer any lien as provided by section 59 of the Act on the goods which are already cleared. The Port Trust being a body corporate constituted under the Act is entitled to be heard by the Court before any order which affects its interests prejudicially is passed. This case serves as an illustration to what is stated above. The Port Trust has been asked to permit the clearance of goods in respect of which demurrage charges of Rs 3,53,514.75 paise are payable in the event of the 1st Respondent being held liable in law to pay the full demurrage charges. The orders passed by the High Court in the proceedings to which the Port Trust was not a party which had the effect of prejudicially affecting the interests of the Port Trust would not be binding on it in view of the violation of the principles of natural justice."

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This Court in the cases aforementioned, therefore, held that the Board of Trustees of a port was, under the statute that created it, entitled to charge demurrage even in respect of periods during which the importer was unable to clear goods from its premises for no fault or negligence on his part. It was held that the Boards were entitled to charge demurrage even in respect of periods during which the importer was unable to clear goods because of the detention thereof by the Customs authorities or the authorities under the Import Trade Control Regulations, which detentions were thereafter found to be unjustified. This Court also recognised that the Boards were entities in their own right so that the courts could not direct the Customs authorities to issue a detention certificate without hearing the Board concerned. This was because the issuance of a detention certificate had the effect of reducing the amount of demurrages that the Board would otherwise have charged.

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The International Airports Authority Act, 1971 constitutes, under the provisions of section 3(1), the International Airports Authority of India (the Authority). By reason of section 3(2) the Authority is a body corporate having perpetual succession and a common seal, with power to acquire,

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hold and dispose of property, both movable and immovable, and to contract and to sue and be sued by the aforesaid name. It is, by reason of section 3(3), to consist of a Chairman, the Director General of Civil Aviation and not less than six and not more than thirteen members to be appointed by the Central Government, whose names are required to be notified in the Official Gazette. By reason of section 12 the Central Government is empowered to vest in the Authority, by notification in the Official Gazette, all properties and other assets vested in it for the purposes of airports. Section 14 empowers the Authority to enter into and perform any contract necessary for the discharge of its functions. Section 16(1) states that it shall be the function of the Authority to manage airports efficiently. Section 16(2) makes it the duty of the Authority to provide at the airports such services and facilities as are necessary or desirable for the efficient operation of air transport services thereat. Specifically, the Authority is empowered by Section 16(3)(d) to establish warehouses at the airports for the storage or processing of goods. Section 17 gives power to the Authority to charge, with the previous approval of the Central Government, fees or rent, *inter alia*, for the use and enjoyment by persons of its facilities and other services at any airport. Section 35 directs that the Authority shall, in the discharge of its functions and duties, be bound by such directions on questions of policy as the Central Government may give it in writing from time to time. Section 37 gives the Authority the power to make regulations to provide for all matters for which provision is necessary for the purpose of giving effect to the provisions of the Act. The Authority is specifically empowered by section 37(2)(d) to make regulations for the storage or processing of goods in any warehouse established by it under section 16(3)(d) and the charging of fees for such storage or processing.

By virtue of the power vested in the Authority under section 37, the Authority has framed regulations called the IAA (Storage and Processing of Goods) Regulations, 1980. Under Regulation 4 the Authority is empowered to levy charges, including storage charges and demurrage. Regulation 5 empowers the Authority to fix and revise from time to time the scales of charges. By reason of Regulation 6 the Chairman may in his discretion, for reasons to be recorded, waive charges in deserving cases. The Authority has framed a policy in regard to the waiver of demurrage charges. It provides, in the case of imports, for a free period of seven calendar days from the date of landing of commercial cargo. In regard to detention certificates the policy provides for waiver of demurrage on a

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A graded basis. The waiver is of 80% for the first 90 days, 50% for the period beyond 90 days and upto 6 months, and full demurrage is required to be paid thereafter if the detention is in connection with Import Trade Control formalities. If the detention is by the Customs authorities for analytical purposes, a waiver of 80% is available for the full period of the detention.

B The provisions of the International Airports Authority Act, 1971 are, therefore, similar to the provisions of the Major Port Trusts Act, 1963, and the Port Trusts Acts that preceded it. The regulations framed by the Authority in regard to the storage or processing of imported goods and the policy in regard to the waiver of demurrage are also similar to those of the Boards of Trustees of the ports. The ratio of the judgments of this Court in the cases of *M/s Aminchand Pyarelal, Indian Goods Supplying Co.* and *Jai Hind Oil Mills Co.* applies as much to the Authority as it does to the Boards of Trustees of the ports.

D It was submitted by learned counsel for the first respondents that the judgments in the cases of *M/s. Aminchand Pyarelal, Indian Goods Supplying Co.* and *Jai Hind Oil Mills Company*, decided only that an importer had to pay demurrage though the delay in clearing his goods was not due to his default or negligence. It was submitted that the contention in these appeals was different, namely, that the Authority was the custodian of the Customs authorities and was obliged, by reason of the detention certificates issued by the Customs authorities, not to charge demurrage for the periods covered by the detention certificates. The judgments aforementioned do not only hold that an importer is liable to pay demurrage though he is not responsible for the delay in clearing his goods. The judgments deal with detention certificates issued by the Customs authorities and hold that the importer is liable to pay demurrage at the reduced rate prescribed by the policy framed in that behalf by the Boards even for the period for which a detention certificate has been issued. The judgments recognise that the Boards are entities in their own right and that even the courts cannot compel the Customs authorities to issue detention certificates without first hearing the Board concerned, because detention certificates have the effect of reducing the revenues of the Boards. The Boards and the Authority being similarly placed, the judgments determine the questions raised in these appeals.

H During the course of the hearing reliance was placed upon a Customs

Public Notice dated 30th April 1986 and numbered 30/86. It is issued on the subject of "Unloading/loading - custody of Import/export cargo at Indira Gandhi International Airport, New Delhi". It notifies, for the information of airlines, importers, exporters and clearing agents, that the Collector of Customs, New Delhi, in exercise of powers vested in him under sections 8, 33, 34 and 45 of the Customs Act, 1962, has specified "limits of Customs Area as whole of existing area constituting the Indira Gandhi International Airport, New Delhi including domestic arrival and departure area, Cargo Terminal New International Terminal Complex (CTNITC for short) and the entire premises of Central Warehousing Corporation Ltd. (CWC for short), located at Gurgaon Road, New Delhi, excluding M/s. IAA's Import Cargo Warehouse (monkey farm)". The said Customs public notice approves the Authority as custodian of cargo under section 45 of the Customs Act. The cargo, it is stated, would be stored in the Authority's C.T.N.I.T.C. on the condition that it would be subject to the control of the Customs authorities. Clause (vii), which is another condition, reads thus :

"In case of goods detained/seized etc. by customs, the warehousing/storage charges shall be calculated by M/s. IAAI for the period due minus the charge for the period of detention at the instance of Customs as certified by the Assistant Collector of Customs."

The said Customs public notice states that public notices and instructions issued earlier would be deemed to have been modified to the extent mentioned in it.

The said Customs public notice has not been referred to in the pleadings before the High Court or this Court. It was not brought to the notice of the High Court.

As would appear from what has been stated above, the Authority's policy for the waiver of demurrage still covers Customs detention certificates and the Authority has levied demurrage for periods covered by Customs detention certificates even after the issuance of the said Customs public notice. In the case of *M/s. Trishul Impex* referred to above the issue was whether demurrage charges for the period covered by a detention certificate should be borne by the importer or by the Customs authorities and the Customs authorities did not rely upon the said Customs public notice to contend that the Authority could not charge demurrage for the period covered by a detention certificate and were ordered to make the

A payment. It appears, therefore, that the said Customs public notice has not been acted upon by the Authority and by the Customs authorities.

In any event, the provisions of the Customs Act under which the said Customs public notice was issued may be examined. Section 8 empowers the Collectors of Customs to approve proper places in any Customs port or Customs airport for the unloading and loading of goods and to specify the limits of any Customs area. Section 33 debars the unloading of imported goods at any place other than a place approved under section 8. Section 34 states that imported goods shall not be unloaded from any conveyance except under the supervision of a proper officer. Section 45 reads thus :

C "Restrictions on custody and removal of imported goods -

D (1) Save as otherwise provided in any law for the time being in force, all imported goods unloaded in a customs area shall remain in the custody of such person as may be approved by the Collector of Customs until they are cleared for home consumption or are warehoused or are transhipped in accordance with the provisions of Chapter VII.

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

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

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

G None of these provisions entitles the Collector of Customs to debar the collection of demurrage for the storage of imported goods. They do not entitle him to impose conditions upon the proprietors of ports or airports before they can be approved as Customs ports or airports. Section 45 provides that all imported goods imported in a Customs area must remain in the custody of the person who has been approved by the Collector of Customs until they are cleared and such person is obliged not to permit them to be removed from the Customs area or otherwise dealt

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with except under and in accordance with the permission of the Customs officer. Section 45 does not state that such person shall not be entitled to recover charges from the importer for such period as the Customs authorities direct.

The purpose of the Customs Act on the one hand and the Major Port Trusts Act and the International Airports Authority Act on the other hand are different. The former deals with the collection of Customs duties on imported goods. The latter deals with the maintenance of sea-ports and airports, the facilities to be provided thereat and the charges to be recovered therefor. An importer must land the imported goods at a sea-port or airport. He can clear them only after completion of Customs formalities. For this purpose, the sea-ports and airports are approved and provide storage facilities and Customs officers are accommodated therein to facilitate clearance. For the occupation by the imported goods of space in the sea-port or airport, the Board or the Authority which is its proprietor is entitled to charge the importer. That until Customs clearance the Board or the Authority may not permit the importer to remove his goods from its premises does not imply that it may not charge the importer for the space his goods have occupied until their clearance.

What is stated in the quoted clause of the said Customs public notice would be effective against the Authority only if it were shown that the Authority had, expressly or impliedly, consented to such arrangement; that is not even pleaded.

It cannot be gainsaid that, by reason of unjustified detention of his goods by the Customs authorities, the importer is put to loss by having to pay demurrage charges for the periods of such detention. The Central Government is empowered by section 35 of the International Airports Authority Act, 1971, and section 111 of the Major Port Trusts Act, 1963, to issue to the Authority and the Boards of Trustees, respectively, directions on questions of policy after giving them an opportunity, as far as practicable, of expressing their views. The Central Government can, if so advised, after giving to the Authority and the Boards of Trustees the opportunity of expressing their views, direct them, under the aforementioned provisions, not to levy demurrage charges for periods covered by detention certificates.

A C.A. No. 4227/92

The goods of the first respondent in this appeal were stored, pending their clearance by the Customs authorities, at the Container Freight Station of the appellant, the Central Warehousing Corporation at Patparganj, Delhi. The Central Warehousing Corporation is established under the provisions of the Warehousing Corporations Act, 1962. The provisions of the Warehousing Corporations Act are substantially similar to those of the International Airports Authority Act, 1971, and the Major Port Trusts Act, 1963. What has been said above in regard to the International Airports Authority applies as well to the Central Warehousing Corporation.

C In the result, the appeals (C.A. Nos. 798/92, 3971/92 and 4227/92) are allowed. The judgments and orders under appeal are set aside. The writ petitions filed by the first respondents in each of the appeals are dismissed.

There shall be no order as to costs.

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VENKATACHALA, J. The important question which is required to be considered and answered in deciding the above civil appeal is, whether the Collector of Customs empowered under sub-section (1) of section 45 of the Customs Act, 1962 - "the Act" to approve persons to be custodians of imported goods in customs areas until they are cleared as provided for therein, while approving the International Airports Authority of India - "the IAAI" to be the custodian of such imported goods in the customs area of Indira Gandhi International Airport, New Delhi and Central Warehousing Corporation - "the CWC" to be the custodians of such imported goods received at the customs area - the Container Freight Station, CWC Complex, Pragati Maidan, New Delhi, by issue of public notice or otherwise in that regard, if by such notice or otherwise directs such custodians not to collect custody charges from the consignees of such goods - "the Cargo". because of detention certificates issued by him or his delegatee, will he be acting within the powers conferred upon him under the Act, its Rules or its Regulations, and, if not, can such direction be enforced against the custodians?

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Divergent views are expressed on the said question by my revered brethren R.M. Sahai and S.P. Bharucha, JJ. in their separate judgments, the drafts of which I had the advantage of going through. The said question being of considerable importance I propose to consider it independently,

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express my view thereon and decide the present appeals accordingly.

Civil Appeal No. 798 of 1992 arises out of the Judgment dated 24.9.1991 of the High Court of Delhi in Civil Writ No. 554 of 1991, by which the IAAI was directed to release the goods to respondent-1 here (petitioner in the Writ Petition) without collecting any demurrage charges for the period for which the detention certificate had been issued by the Assistant Collector of Customs. Such direction was issued by the High Court because of its view that the IAAI when was the custodian of the goods at the instance of the Collector of Customs, the IAAI was not entitled to recover demurrage charges from the petitioner in the Writ Petition (respondent-1 in the appeal) - the consignee, for the period covered by the detention certificate issued by the Collector of Customs or his delegatee. Such view was taken by the High Court, following its earlier Division Bench judgment in *M/s. Trishul Impex v. Union of India*, (1991) 2 Delhi Lawyer 1.

Civil Appeal No. 3971 of 1992 arises out of the Judgment dated 3.2.1992 of the High Court of Delhi in Civil Writ Petition No. 3235 of 1989, whereby the IAAI - the appellant herein, was directed to refund demurrage charges which it had collected in respect of the goods of the petitioner therein - respondent-1 herein, despite the detention certificate issued in respect of such goods by the Asstt. Collector of Customs. Such direction, according to the High Court, was issued following its earlier Division Bench judgments in *M/s. Trishul Impex* (supra) and *Grand Slam International v. Union of India*, - C.W. 554 of 1991 decided on 21st September, 1991.

Civil Appeal No. 4227 of 1992 arises out of Judgment dated 22.1.1992 again of the High Court of Delhi in C.W. No. 1751 of 1991, by which it directed the CWC to release the goods of the petitioner therein without collecting the demurrae charges from the petitioner therein in respect of the period covered by the detention certificate issued by the Asstt. Collector of Customs. Such direction, it is said in the judgment, was issued following its Division Bench judgment in *M/s. Trishul Impex* (supra), wherein it was held that the custodian of the goods under section 45 of the Customs Act being the custodian on behalf of the Customs authorities, it was bound to release the goods in favour of the consignee when once a detention certificate had been issued by the Customs authorities.

A It would be convenient to consider and answer the aforesaid question with reference to Civil Appeal No. 798 of 1992 and Civil Appeal No. 3971 of 1992 in which the appellant, "the IAAI" is common and dispose of the appeals accordingly, in that, the answer to be given to the said question, would be sufficient to dispose of Civil Appeal No. 4227 of 1992 as well.

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M/s. Trishul Impex case (supra), has been relied upon by the High Court in giving the directions to the IAAI, in its judgments under appeals, not to collect demurrage charges in respect of the periods covered by the detention certificates issued by the Customs authorities. As has already

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been pointed out, a Division Bench of the same Court had, in the case, expressed its view that when the container Corporation concerned there, was the custodian on behalf of the Customs authorities under section 45(1) of the Act, it was under an obligation to release the goods in its custody without collecting demurrage charges in respect of the period covered by the detention certificate issued by the Customs authorities. In *M/s. Grand*

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Slam International (supra), which is another decision of the Division Bench of the same Court relied upon by it in its judgment in C.A. No. 3971 of 1992, the view taken is that the goods for which demurrage charges were levied by the custodian, if was solely on account of the fault of the Customs authorities the liability for the same would be of those Customs authorities

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and not of the consignee. But, when once the Customs authorities issued the detention certificate in respect of such period of detention of goods, the custodian who had the custody of goods on behalf of Customs authorities had no option but to release the goods to the consignee. Therefore, the directions given by the High Court in the judgments under

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appeals to release the goods in its custody to the consignees without collecting demurrage charges from them in respect of the periods covered by the detention certificates issued by the Customs authorities is based on its view that when the goods of the consignee had been kept by the custodian for and on behalf of the Customs authorities, the consignee cannot be made liable to make goods such demurrage charges in respect

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of the periods of such detention for which detention certificates were issued by the Customs authorities, which was taken following the view already taken in similar matters by its Division Benches. At the sustainability of the said view of the High Court is under challenge in the present appeals, the question adverted to at the outset is required to be

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considered and answered for rendering a proper decision in them.

The provision in sub-section (1) of section 45, which bears on the question required to be considered, reads thus : A

"45. Restrictions on custody and removal of imported goods. - (1) Save as otherwise provided in any law for the time being in force, all imported goods unloaded in a customs area shall remain in the custody of such person as may be approved by the Collector of Customs until they are cleared for home consumption or are warehoused or are transhipped in accordance with the provisions of Chapter VIII." B

As becomes clear from the above sub-section all imported goods unloaded in customs areas shall remain in custody of such person as may be approved by the Collector of Customs until they are cleared for the purposes indicated therein. Therefore, under the above provision the Collector of Customs is the person who is empowered to approve the persons that should be in custody of goods unloaded in customs areas. The Collector of Customs, New Delhi who has issued Notice No. 30/86, has by clause (d) of that Notice approved the IAAI as the custodian of cargo to be stored in Cargo Terminal, New International Terminal Complex - "the CTNITC", obviously exercising the powers conferred upon him by sub-section (1) of Section 45 of the Act. But, the Collector of Customs who has approved the IAAI as custodian of the cargo to be stored in its CTNITC by the said clause (d) requires IAAI to comply with condition (vii) imposed against it thereunder, thus : C
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"(vii). In case of goods detained/seized etc. by customs, the warehousing/storage charges shall be calculated by M/s. IAAI for the period due minus the charges for the period of detention at the instance of Customs as certified by the Assistant Collector of Customs." F

No doubt, as to what obligations should the custodian – the IAAI approved by the Collector of Customs under sub-section (1) of Section 45 by clause (d) of the said public Notice, perform, are specified in sub-section (2) thereof which reads : G

"45. Restrictions on custody and removal of imported goods. –

(1) H

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

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

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

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But, the said sub-section (2) of Section 45 as is seen therefrom, does not in any way impose an obligation on the custodian approved under sub-section (1) thereof not to collect charges leviable on the consignee by it according to Rules or Regulations made by the Statute creating it for keeping the imported goods in its custody.

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That is why, it is claimed on behalf of the IAAI, the appellant in the appeals that condition (vii) of clause (d) of the said public Notice has been imposed by the Collector of Customs without any power or authority conferred upon him in that regard under any provision of the Act or its Rules or its Regulations and hence unenforceable.

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Learned counsel appearing for respondents were not able to invite Court's attention to any provision either in the Act or the Rules or the Regulations made thereunder which empowered the Collector of Customs to impose by issue of public Notice the above condition (vii) in clause (d) thereof denying the IAAI which is approved as the custodian of imported

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goods in Customs area, the right to collect the charges from the consignee for keeping his imported goods detained or seized by the Customs authorities nor my effort to find any provision in the Act or its Rules or its Regulations enabled me to find any provision which conferred such power of imposing such condition upon the IAAI merely because it is approved as the custodian of imported goods on behalf of Customs Department.

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However, as to whether the Parliament in enacting the Act intended that custodians to be approved thereunder to keep the goods coming into customs areas should relieve the owners (consignees) of such goods of their liability for payment of charges for such keeping or otherwise could be

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gathered from the provision in section 63 of the Act, it is excerpted :

"63. *Payment of rent and warehouse charges.* - (10) The owner of any warehoused goods shall pay to the warehouse-keeper rent and warehouse charges at the rates fixed under any law for the time being in force or where no rates are so fixed, at such rates as may be fixed by the Collector of Customs. A

(2). If any rent or warehouse charges are not paid within ten days from the date when they became due, the warehouse-keeper may, after notice to the owner of the warehoused goods and with the permission of the proper officer cause to be sold (any transfer of the warehoused goods notwithstanding) such sufficient portion of the goods as the warehouse-keeper may select." B C

When sub-section (1) above, does not relieve the owner of any warehoused goods to pay to the warehouse-keeper rent and warehouse charges at the rates fixed under any law for the time being in force or where no rates are so fixed, at such rates as may be fixed by the Collector of Customs, although such goods were kept by the warehouse-keeper for and on behalf of the Customs Department and again when sub-section (2) enables the warehouse-keeper even to sell the warehouse goods with the permission of the proper officer for unpaid rent or warehouse charges, it is difficult to think that there could be any provision in the Act or the Rules or the Regulations made thereunder which confers on the Collector of Customs power to direct the release of the goods kept in the custody, as custodian of the Customs Department without demanding payment of keeping charges from the consignee of goods because of detention certificates issued in that regard by the Customs authorities, inasmuch as, the said provision shows the legislative intendment to be to the contrary. D E F

In fact, when the IAAI in exercise of its powers conferred by sub-section (1) of section 37 of the International Airports Authority Act, 1971 - "the IAA Act", and with the prior approval of the Central Government have made regulations called the international Airport Authority (Storage and Preservation of Goods) Regulations, 1980, regulating levy of charges or surcharges, scale of charges and waiver of charges payable by the owner in case of warehoused goods with the IAAI, those Regulations not only do not come in conflict with the Act or its Regulations or its Rules but conform to the requirement of the provision of section 63 of the Act. When H

- A in pursuance of the said Regulations policy directions are issued by the IAAI in supersession of earlier instructions on the subject of waiver of demurrage charges on production of detention certificate issued by the Customs authorities showing that detention of goods was for no fault of consignee, it can be safely concluded that any directions issued by customs
- B Collector contrary to such Regulations and the policy directions as those issued without authority in law are *ultra vires* his powers. Therefore, I have no hesitation in holding that the aforesaid condition (vii) in clause (d) of the Customs Public Notice No. 30/86 directing the IAAI not to collect the custody charges in respect of the goods for which detention certificates
- C may be issued by the Collector of Customs or his delegatee, has to be regarded as a condition imposed by the Collector of Customs without being conferred any power in that regard either in the Act or the Rules or the Regulations. If condition (vii) of clause (d) of the Customs Public Notice
- D No. 30/86 is regarded as that imposed by the Collector of Customs without authority of law, it having been imposed *ultra vires* his powers under the Act or Rules or Regulations no Court can direct the IAAI to release the goods of the consignee without collecting from him demurrage charges levied according to its Regulations in respect of the goods, which it had taken care of as the custodian merely because there was a detention certificate of the Collector of Customs or his delegatee issued to the IAAI
- E which had been approved as the custodian of such goods by the Collector of Customs under sub-section (1) of section 45 of the Act.

- As the above view expressed by me on condition (vii) under clause (d) of the Customs Public Notice No. 30/86 receives considerable support
- F from the decisions of this Court, where this Court while dealing with the liability of consignees of imported goods or cargo to pay demurrage charges levied in respect of them according to scales of charges prescribed under Rules or Regulations made under respective Ports Acts because of their non-clearance from Customs areas in Ports, notwithstanding the fact
- G that concerned Port Authority was the approved Custodian under the Customs Act, 1962 and the fact that Customs Collector or his delegate had issued detention certificates which made it clear that the goods were detained for no fault of the consignee and the goods shall be released without collection of demurrage charges, they shall be adverted to present-
- H ly.

Trustees of the Port of Madras v. M/s. Aminchand Pyarelal & Ors., [1976] 1 SCR 721 is the first of such decisions of this Court. That was a case, where imported goods of M/s Aminchand Pyarelal – ‘the importer’ were not cleared from the customs area of the Port of Madras by the Customs authorities before the expiry of free days. The goods, therefore, continued to be in the custody of Trustees of the Port of Madras - "the Board", as approved custodian of such goods on behalf of the Customs authorities. However, a detention certificate was issued to the importer by the Customs authorities stating that the detention of the imported goods beyond the free days was not due to fault or negligence on the part of the importer. The Board, based on the detention certificate waived demurrage charges payable by the importer amounting to Rs. 3,20,951, and released the goods to the importer. Later, when the Customs authorities owned their mistake of issuing the detention certificate wrongly, the Board, filed a suit against the importer, the Union of India and the Customs authorities for recovery of the demurrage charges which had not been recovered on account of the detention certificate. But, that suit was resisted by the importer on the plea that the delay in clearing the goods was due to fault on the part of the Customs authorities and hence there was no legal obligation on its part to pay the demurrage charges. The suit was dismissed by the High Court accepting the plea of the importer. When the Board brought up the matter before this Court in appeal, the provisions of the Madras Port Trust Act and the scale of rates fixed by the Board with the approval of the Central Government pursuant to the provisions of the Act having been thoroughly examined, it was held that the High Court was in error in its conclusion that the Board had no power to charge demurrage where goods were not removed from its premises not due to the fault or negligence on the part of the importer, but due to fault of the Customs authorities.

Board of Trustees of the Port of Bombay v. Indian Goods Supplying Co., [1977] 3 SCR 343 is the second of such decisions of this Court, where this Court examined the sustainability of scales of rates of demurrage of goods framed by the Board of Trustees of the Port of Bombay - "the Board", the provisions of which were in *pari materia* with the Madras Port Trust Act. This Court held that the case it was examining being in all force with the case of *M/s. Aminchand Pyare Lal* (supra) it had to be concluded on the basis of the decision rendered therein. Consequently, it reversed the

A judgment of the High Court in appeal by holding that the High Court was in error in its view that the importer of the goods could not be held responsible for any delay not attributable to his own fault and that the demurrage under the statute could never be imposed as long as goods were detained for the purpose of Import Trade Control Regulations.

B *Board of Trustees of the Port of Bombay v. Jai Hind Oil Mills Co. & Ors.*, [1987] 1 SCR 932 is the third of such decisions of this Court. There, the provisions of the Major Port Trust Act, 1963, which were under examination of this Court having been found to be in *pari materia* with the provisions of the Ports Act considered by this Court in *M/s Aminchand Pyare Lal* (supra) and *Indian Goods Supplying Co.* (supra), by following
C the decisions rendered therein, it was held thus :

D The power of a Port Trust to fix rates of demurrage and to recover the same from an importer or exporter (although the question of an exporter paying demurrage arises rarely) under law and to show concession as regards demurrage charges in certain specified cases is recognised by the Court in the *Trustees of the Port of Madras v. M/s. Aminchand Pyarelal & Others*, [1976] 1 S.C.R. 721 and in the *Board of Trustees of the Port of Bombay v. Indian Goods Supplying Co.*, [1977] 3 S.C.R. 343. These decisions are no doubt based on
E the relevant laws which were in force at the material time. But the decisions are still relevant insofar as cases arising under the Act because the Act also contains provisions more or less similar to the statutory provisions considered in the said decisions. Demurrage charges are levied in order to ensure quick clearance of the
F cargo from the harbour. They are always fixed in such a way that they would make it unprofitable for importers to use the port premises as a warehouse. It is necessary to do so because congestion in the ports affects the free movement of ships and the loading and unloading operations. As stated earlier, the Port Trust shows concession to the party concerned in certain types of cases."

G From the above decisions of this Court it becomes clear that an authority created under a statute even if is the custodian of the imported goods because of the provisions of the Customs Act, 1961, would be
H entitled to charge demurrages for the imported goods in its custody and make the importer or consignee liable for the same even for periods during

which he/it was unable to clear the goods from the Customs area, due to fault on the part of the Customs authorities or of other authorities who might have issued detention certificates owing such fault. A

Thus, the above decisions of this Court which uphold the power of Ports Trusts created under Ports Act to levy and collect demurrage charges for goods they keep as Custodians for Customs Department from the consignees notwithstanding the detention certificates issued by the Customs Department clearly support the view I have taken that the IAAI, an authority constituted under the International Airports Authority Act, 1971, when is entitled to collect charges for keeping custody of the imported goods by regulations made thereunder and according to its policy, the Collector of Customs or his delegatee could not direct the IAAI by issuance of a detention certificate to release the goods of the importer without collection of the charges liable to be paid in respect thereof, inasmuch as the Collector of Customs or his delegatee has not been empowered under the provisions of the Act or its Rules or its Regulations to direct release of the imported goods without collection of keeping charges, for the keeping of which by the IAAI, charges are to be paid under the Rules made under the International Airports Authority Act, 1971. B C D

Since Central Warehousing Corporation created under Warehousing Corporation Act, 1962 stands in the same footing as that of the IAAI created under the International Airports Authority Act, 1971 in the matter of keeping of goods as custodians on behalf of the Customs Department and the entitlement of both of them under the respective Acts, Rules and Regulations to levy and collect demurrage charges from the owners or consignees of such goods, not being different, the view I have taken on the entitlement of IAAI to levy and collect charges or demurrage charges for keeping goods by it as custodian on behalf of the Customs Department, equally holds good for Central Warehousing Corporation. E F

Therefore, my answer to the question considered by me is in the negative i.e. the Collector of Customs empowered under sub-section (1) of section 45 of the Customs Act, 1962 to approve persons to be custodians of imported goods in customs areas until they are cleared as provided for therein, while approving the International Airports Authority of India to be the custodian of such imported goods in the customs area of Indira Gandhi International Airport, New Delhi and Central Warehousing Cor- G H

A poration to be the custodians of such imported goods received at the customs area - the Container Freight Station, CWC Complex, Pragati Maidan, New Delhi, by issue of Public notice or otherwise in that regard, if by such notice or otherwise directs such custodians not to collect custody charges from the consignees of such goods - "the Cargo", because of detention certificates issued by him or his delegatee, will not be acting within the powers conferred upon him under the Act, its Rules or its Regulations and hence directions given by the Customs Collector or his delegates to release the goods of importers or consignees without collecting demurrage charges from them cannot be enforced by Courts either against IAAI or CWC.

C The view I have so taken makes the judgment of High Court of Delhi under appeals unsustainable, for the view of its earlier decisions in *M/s. Trishul Impex* case (supra) and *Grand Slam* case (supra) which it has followed, also cannot be sustained.

D *Civil Appeal No. 4227 of 1992 :*

The Central Warehousing Corporation established under the provisions of the Warehousing Corporation Act, 1962 is a creature of statute as is the IAAI under the International Airports Authority Act, 1971.

E The entitlement of the CWC to recover demurrages for the goods of which it becomes the custodian under the provisions of the Act cannot be different from that of the IAAI, as indicated in the earlier judgment. If that be so, what I have said in the aforesaid appeals of the IAAI would equally apply to the CWC also. The High Court having directed the Customs authorities to issue detention certificates in respect of the goods of which the CWC was the owner has relieved the importer - respondent-1 in the appeal from his liability to pay demurrage charges. Because of the view I have taken in my judgment in the earlier appeals it has to be held that the High Court's direction relieving respondent-1 from his liability to pay demurrage charges cannot be sustained.

G In the result, Civil Appeal Nos. 798 of 1992, 3971 of 1992 and 4227 of 1992 are allowed. The judgments of the High Court under appeals are set aside. The Writ Petitions filed by respondent-1 in each of the cases before the High Court are dismissed. In the facts of the present appeals, there shall be no order as to costs.

H

ORDER

A

For reasons given by us in our separate judgments (R.M. Sahai, J. for dismissal of the appeals whereas S.P. Bharucha and N. Venkatachala, JJ. for allowing the appeals) the appeals succeed and are allowed. The orders passed by the High Court are set aside. And the Writ Petition shall stand dismissed. But in the circumstances of the case, there shall be no order as to costs. B

R.A.

Appeals allowed.