

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 3<sup>RD</sup> DAY OF JANUARY 2022 / 13TH POUSHA, 1943

WP(C) NO. 19590 OF 2021

PETITIONER:

EISA NOOH ZETNAN ZETAN  
AGED 53 YEARS  
HOLDER OF YEMENI PASSPORT NO.08442604,  
RESIDING AT YEMEN  
REPRESENTED BY POWER OF ATTORNEY HOLDER,  
SULTAN ALI MATAR HUMAID AL SHAMSI,  
S/O.ALI MATAR HUMAID, AGED 53,  
RESIDING AT P.B. NO.132, AJMAN,  
UNITED ARAB EMIRATES.

BY

ADV.C.UNNIKRISHNAN (KOLLAM)  
ADV.ANANDA PADMANABHAN  
ADV.SREEDEVI S.  
ADV.K.P.SUFIYAN  
ADV.P.P.SHAMEER

RESPONDENTS:

- 1 ASSISTANT COMMISSIONER OF CUSTOMS (R&I)  
COCHIN CUSTOMS (PREVENTIVE),  
DEPARTMENT OF REVENUE,  
GOVERNMENT OF INDIA
- 2 STATION HOUSE OFFICER  
FORT KOCHI COASTAL POLICE STATION  
PIN 682 001
- 3 THE DEPUTY COMMANDANT  
INDIAN COAST GUARD SHIP "ARYAMAN",  
FORT KOCHI PIN 682 021

\*4 COMMISSIONER OF CUSTOMS (PREVENTIVE)  
OFFICE OF THE COMMISSIONER OF CUSTOMS  
(PREVENTIVE), 5TH FLOOR, CATHOLIC CENTER,  
BROADWAY, COCHIN - 682 031.

\*[ADDITIONAL R4 IS IMPEADED AS PER ORDER DATED  
15.11.2021 IN I.A.No.01/2021 IN WP(C)19590/2021].

BY ADVS.

R2 BY SRI.JUSTIN JACOB, SR.GOV'T. PLEADER

R1 & R4 BY SRI.SREELAL N. WARRIER, SC, CENTRAL  
BOARD OF EXCISE & CUSTOMS

R3 BY SRI.SUVIN R.MENON, CGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 10.12.2021, THE COURT ON 03.01.2022 DELIVERED  
THE FOLLOWING:

“C.R.”

**BECHU KURIAN THOMAS, J.**

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**W.P.(C) No.19590 of 2021**  
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Dated this the 3<sup>rd</sup> day of January, 2022

**JUDGMENT**

A fishing vessel by name “Al Thriaya-3” is registered with the Republic of Yemen. While the vessel was fishing on the high seas at Yemen, it was abducted by its own crew members and brought it near the territorial waters of India. A distress call was made to the Indian Coast Guard at Kochi, who brought the fishing vessel into the Indian territorial waters. The vessel Al Thriaya-3 (for short, 'the vessel') along with the goods in it have now been ordered to be confiscated by the impugned order of the Commissioner of Customs (Preventive) Cochin. The owner of the vessel, who is a national of the Republic of Yemen, is before this Court challenging the order of confiscation issued under section 111 of the Customs Act, 1962 (for short the Act) and also seek release of the vessel and the goods, without paying the redemption fine or the duty.

2. Petitioner pleads that when the Coast Guard Authorities received a distress call from the crew of the foreign fishing vessel on 29-11-2019, it was brought into the territorial waters of India and to the Kochi Port. The vessel was later seized by the Coastal Police at Fort Kochi and a crime was registered as FIR No.12/2019 under section 102 of the Cr.P.C.

3. Later, when petitioner came to know about the abduction of the vessel and the registration of crime, he filed an application as CrI.M.P. No.58 of 2020 before the Judicial First Class Magistrates Court-I, Kochi, for release of the vessel as Ext.P3. The Customs also filed Ext.P4 application for custody of the vessel as CrI.M.P. No.59 of 2020 before the same Magistrate. By order dated 10-03-2020, the learned Magistrate allowed the application of the Customs and granted custody of the vessel to them, with liberty to the petitioner to prove the claim before the Customs Authorities.

4. Consequent to the aforesaid turn of events, the customs authorities issued a notice under section 124 of the Act on 24-06-2020. On the basis of objection filed by the petitioner, hearings were conducted and the first respondent issued Ext.P1 order dated 05-11-2020 finding that the vessel is liable to be

confiscated under section 111(d),(f) & (l) of the Act with an option to redeem the vessel on payment of the redemption fine fixed at Rs.Ten lakhs. Later, a corrigendum was issued, imposing a duty of Rs.5,21,959/- on the vessel and the goods found on board as per sections 21, 30 and 46(1) of the Act.

5. Petitioner challenges the order of confiscation and the corrigendum order, alleging it to be without authority and issued in excess of jurisdiction. According to the petitioner, penalising the petitioner for criminal acts done without his knowledge after abducting his vessel is highly arbitrary and unjust.

6. A counter affidavit has been filed by the first respondent justifying the order of confiscation and stated that the orders of confiscation can be challenged by way of statutory appeal under section 129 of the Act and therefore the writ petition is liable to be dismissed. Respondents further stated that, even otherwise, the petitioner has an opportunity to pay the redemption fine, which is an option available to the petitioner rather than challenging the order impugned in this writ petition.

7. I have heard Sri.C.Unnikrishnan, learned counsel for the petitioner, Sri.Sreelal N. Warriar, learned Standing Counsel for

respondents 1 and 4, Sri.Justin Jacob, learned Government Pleader for the 2<sup>nd</sup> respondent and Sri. S.Manu, learned ASGI for the 3<sup>rd</sup> respondent.

8. It is true that petitioner has an alternative remedy of appeal under section 129 of the Act. However, taking into consideration the circumstances arising in the case and the nature of the challenge questioning the jurisdiction and authority of the first respondent to issue the impugned orders, this Court is of the opinion that the petitioner need not be relegated to the alternative remedy of appeal.

9. The circumstances that arise in the case reveal an extraordinary situation. The vessel is undoubtedly a foreign vessel. The crew of the foreign vessel - who are Indians, while carrying on fishing activity in the high seas of the Republic of Yemen sailed towards India. Pursuant to a plot crafted by the crew, a distress call was made stating that they are being subjected to mistreatment and were being compelled to work without wages. Answering the distress call, the Indian Coast Guard brought the vessel into the territorial waters of India. The investigation by the Customs revealed that the above acts were done without the knowledge of the petitioner. The respondents in fact, admit that the petitioner had no involvement in

the vessel being brought to India. This fact is evident from the discussions in the impugned order, which will be referred to, later in this judgment.

10. A distress signal, or a distress call, is an accepted and recognized mode, calling for help while on the high seas. Distress calls are communicated through radio signals or through visually observable items or illuminations, or by making sounds audible from a distance.

11. Several regulations govern the field relating to the safety of life at sea. To deal with the safety of life at sea, an international treaty has been entered into called 'The United Nations Convention on the Law of Seas' referred to as "UNCLOS". Article 98 of UNCLOS prescribes it as a duty of every State to render assistance in the event of any danger to a vessel or its crew and to proceed to rescue the person in distress. Article 98 is extracted as below:

***"Article 98. Duty to render assistance:***

*1. Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:*

*(a) to render assistance to any person found at sea in danger of being lost;*

*(b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably*

*be expected of him;  
(c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.*

*2. Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements, cooperate with neighbouring States for this purpose.*

12. Similarly, there is another treaty called the Safety of Life at Sea known as the 'SOLAS' to which India was one of the earliest signatories. Though SOLAS mainly relate to the construction and maintenance of vessels, including fishing vessels, it provides in Regulation V/7 an obligation upon every State to ensure that necessary arrangements are made for distress communication and co-ordination in their area of responsibility and for the rescue of persons in distress at sea around its coasts. These arrangements shall include establishing, operating, and maintaining such search and rescue facilities as practicable and necessary.

13. A distress signal from a vessel generally indicates that either the vessel or its crew is in imminent danger. When a coastal State receives a distress signal, there is an obligation under the

International Maritime Rules to help such a vessel in distress. The responsibility to respond to a distress call from a vessel is that of the coast station that received the distress alert. Thus the Indian Coast Guard acted in accord with the International Treaty and Rules by responding to the distress call that arose from the vessel and brought it into the territorial waters of India and to the Kochi Port.

14. As mentioned earlier, the investigation by the Customs revealed that the distress call was a ploy adopted by the crew of the vessel, which had, in reality, abducted the vessel and brought it near India and then made the false distress call. The following finding in the impugned order is relevant in this context: *“I find from the relied upon documents the Vessel “Al-Thariaya-3” is a fishing vessel registered under the Coast Guard Command, Hadramout Zone under H.C.G.F-V247 owned by Shri Sultan Ali Matar Humaid Al Shamsi, P.B No. 132, Ajman, United Arab Emirates which was seized by the Customs Authorities which in fact had been subject to abduction by the crew of the Vessel and thus the Vessel had been brought to the territorial waters of India illegally without the consent from the owner of the Vessel. That the crew of the Vessel had malafide intentions and had abducted the Vessel falsely claiming*

*unpaid wages and such obscured claims of mistreatment. The Vessel had entered into the Indian Port (Kochi) with the help of Coast Guard by a fake distress call made by the crew of the Vessel”.* Thus it is a concluded finding that the vessel was brought into the Indian waters by the Coast Guard, pursuant to a fake distress call made by its crew, without the knowledge of the owner of the vessel. The crew being Indians, obviously, the distress call was intended to create a passage for the crew, back to the Country, by illegal means.

15. When a fishing vessel was brought into the country, without the knowledge of its owner, on the basis of acts that may tantamount to a crime committed by the crew of the vessel, can it be said to be an act of import as contemplated under the Act?

16. No doubt a vessel will satisfy the definition of 'goods' under section 2(22) of the Act. However, there is a distinction between a vessel imported into India as 'goods' and a vessel brought into India as 'a conveyance carrying goods or people'. It is only the former that may be 'goods' for the purpose of imposing customs duty. (see the decision in **Commissioner of Customs, Mumbai v. Aban Loyd Chiles Offshore Ltd. and Others** [(2017) 3 SCC 211])

17. Though the vessel is also a 'goods' under the definition, for

the purpose of confiscation or for imposing a duty, the primary requirement under the Act is that there must be an “import”. Section 2(23) of the Act defines the word ‘import’ as follows:

*2(23).“import”, with its grammatical variations and cognate expressions, means bringing into India from a place outside India;*

The definition section starts with the words “*In this Act, unless the context otherwise requires*”. Thus the word import has to be given a contextual interpretation while considering whether an abducted vessel brought into the territorial waters of India by the Coast Guard can be treated as having been imported into India.

18. If the word ‘import’, as defined in section 2(23) of the Act, is given a literal meaning, in the context of the facts of this case, it would lead to an absurdity. When the owner of an abducted vessel wants to take the vessel back to the flag State, terming the crossing of the territorial waters of India at the behest of the Coast Guard, who acted pursuant to a distress call, as an import into India, will indubitably lead to an absurdity. The act of bringing into the territorial waters of the country, not being a voluntary action on the part of the owner of the vessel, confiscating the same, is highly arbitrary and contrary to law. Every order of confiscation must of necessity be

based upon the circumstances arising in each case. A pedantic and rigid approach, dehors the factual circumstances, is not called for.

19. The vessel or the goods in it have not been used or put to any use in India, for any purpose. The vessel or the goods have not merged with the mass of the goods in the country. Therefore, in the instant case, there cannot be any import into India as contemplated under the Act. Reference can be profitably made to the decision in **Union of India and Another v. V.M. Salgaoncar & Bros. (P) Ltd. and Others** [(1998) 4 SCC 263].

20. Similarly, in the decision in **Commissioner of Customs, Mumbai v. Aban Loyd Chiles Offshore Ltd. and Others** [(2017) 3 SCC 211] it was held that repair of a foreign going vessel at a port in India does not amount to a taxable import nor does it fall within the ambit of home consumption.

21. In view of the above, the abduction and bringing into India of a foreign vessel by its crew illegally, without the knowledge of its owner, cannot amount to import or be liable to customs duty as contemplated under the Act, unless the same is used for consumption in India.

22. Apart from the above, the circumstances of the case clearly

evinces only an instance of the vessel, as well as the goods, to be treated as 'goods in transit'. The learned counsel for the petitioner had submitted that, petitioner has no intention of using the vessel in India for any purpose whatsoever. In this context, it is apposite to refer to section 53 of the Act.

***“S.53. Transit of certain goods without payment of duty.- Subject to the provisions of section 11, where any goods imported in a conveyance and mentioned in the import manifest or the import report, as the case may be, as for transit in the same conveyance to any place outside India or any customs station, the proper officer may allow the goods and the conveyance to transit without payment of duty, subject to such conditions, as may be prescribed.”***

23. If the vessel and the goods that came with it are intended by the owner to be taken back to the flag State of the vessel, the bringing into the country can only be regarded as in the course of transit if it is mentioned in the import manifest or report. In the light of the submission made on behalf of the petitioner that the vessel or the goods would not be used in India and on an appreciation of the proved facts, as evident from the impugned order, even in the absence of the import manifest, the conveyance and the goods in the said conveyance could at the most be regarded as in transit and not liable to be imposed with customs duty or subjected to confiscation.

24. The impugned order of confiscation reveals that the

customs duty and confiscation have been imposed and ordered as per Ext.P1 and Ext.P2 in a mechanical manner, without bearing in mind the fact that it was not the volition of the owner of the vessel to bring the vessel or the goods into India. To penalise the owner of the vessel, when admittedly he had no knowledge of the alleged 'bringing into India' of the vessel or the goods in it, in the context of the factual situation emerging in this case, is, to say the least, too harsh, arbitrary and not contemplated under law.

25. In view of the above, none of the ingredients of section 111(d), (f) &(l) of the Customs Act, 1962 are satisfied to warrant an order of confiscation. The order of confiscation issued as per Ext.P1 shall stand set aside. Similarly the ingredients of section 46(1) or that of section 30 are satisfied. The vessel cannot also be regarded as falling under the category of goods falling in section 21 of the Act. Hence the corrigendum order issued as Ext.P2 shall also stand set aside. It is declared that the vessel and the goods inside it are not susceptible to customs duty or confiscation proceedings under the Act, provided the vessel or the goods are not used inside the country for any purpose whatsoever and the same are taken out of the country.

26. Hence while setting aside Ext.P1 and Ext.P2 orders, the respondents are directed to handover custody of the vessel and the goods in it, to the petitioner forthwith, without imposing any charges and in 'as is where is condition'. The petitioner shall also file an undertaking before the first respondent that neither the vessel nor the goods shall be used or consumed in any part of India and shall be taken out of the country as soon as it is sea worthy.

The writ petition is thus allowed as above.

Sd/-

**BECHU KURIAN THOMAS  
JUDGE**

vps

APPENDIX OF WP(C) 19590/2021

**PETITIONER EXHIBITS**

- EXHIBIT P1**                    A TRUE COPY OF THE ORDER NO.COC-CUSTOMS  
- PRV-COM-70-2020-21 DAED 5.11.2020 OF  
THE 1ST RESPONDENT
- EXHIBIT P2**                    A TRUE COPY OF THE CORRIGENDUM ORDER  
NO.VIII/10/77/2020/CCP-ADJ/137            DATED  
18.1.2021 OF THE 1ST RESPONDENT
- EXHIBIT P3**                    A TRUE COPY OF THE CRL.M.P.NO.58/2020  
FILED BEFORE THE JFMC-I, KOCHI BY THE  
PETITIONER
- EXHIBIT P4**                    A TRUE COPY OF THE CRL.M.P.NO.59/2020  
FILED BEFORE THE JFMC-I, KOCHI BY THE  
1ST RESPONDENT
- EXHIBIT P5**                    A TRUE COPY OF THE COMMON ORDER OF THE  
LEARNED MAGISTRATE DATED 10/3/2020
- EXHIBIT P6**                    TRUE COPIES OF DOCUMENTS ISSUED BY THE  
MINISTRY OF FOREIGN AFFAIRS AND  
DEPARTMENT OF MARINE SECURITY, REPUBLIC  
OF YEMEN REGARDING THE ABDUCTION OF  
FISHING VESSEL IN ARABIC AND ITS ENGLISH  
TRANSLATION DATED 5/12/2019