

Customs Duty on the mysterious washed ashore chariot

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A mysterious gold coloured chariot like structure floated into the Srikakulam District of Andhra Pradesh last week during the Asani cyclone in the Bay of Bengal. It is believed that the structure was made in Myanmar. And just floated its way into India. It is not yet known as to what is going to be done with the chariot.

But is there a Customs Duty on this structure which just floated into India? What! Customs duty on something that just floated and got washed into the shores of the country? Is it import?

Well, look at Section 21 of the Customs Act that reads as:

SECTION 21. Goods derelict, wreck, etc. - All goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act.

This is nothing new or strange. The Sea Customs Act, 1878 had a similar provision.

27. Goods derelict and wreck.- All goods derelict, jetsam, flotsam and wreck, brought or coming into any place in India, shall be subject to the same duties, if any, to which goods of the like kind are for the time being subject on importation at any customs-port, and shall in other respects be dealt with as if they were imported from a foreign port, unless it be shown to the satisfaction of the Customs-Collector that such goods are the produce or manufacture of any place from which they are entitled to be admitted duty-free.

The Customs Tariff Act, 1876 of UK had a provision,

All goods derelict, jetsam, flotsam, and wreck brought or coming into the United Kingdom, and all droits of Admiralty sold in the United Kingdom, shall be subject and charged with the same duties as are chargeable on the like kinds of goods on importation into the United Kingdom.

Section 23 of the Pakistan Customs Act states:

23. Goods, derelict, wreck, etc.- All goods, derelict, jetsam, flotsam and wreck, brought or coming into Pakistan, shall be dealt with as if they were imported into Pakistan.

Why was this provision inserted in the Customs Act? The Delhi High Court answered this question in the **Jain Shudh Vanaspati** case. (1983)

This Section provides that all goods derelict, jetsam, flotsam, and wreck brought or coming into India, shall be dealt with as if they were imported into India. Now jetsam is where goods are cast into the sea and there sink and remain under water; flotsam is where the goods continue to float on the surface of the water; wreck are such goods including the ship or cargo or any part as are afloat or cast upon the land by sea.

If the argument of the counsel for the petitioner was correct that mere entering into territorial waters amounts to import, for

fiscal purposes then this fiction need not have been created by Section 21 because it would have been superfluous. Why fiction has been created is because under the meaning given to import, it would be impossible to apply this to flotsam, wreck, because these are never meant to form a part of the mass of goods on the mainland.

There is no question of clearing wreck, jetsam for home consumption, and the question of payment of duty would never arise. But Section 21 created a fiction of import. This exercise would not have been necessary, if as argued by Mr. Rana import for fiscal purpose was complete the moment goods enter territorial waters. This fiction has been created for the obvious purpose so that people engaged in smuggling may not just throw away the goods on the sea or under the sea to be picked up by concerned persons and claim that they were never brought within the port for the purpose of home consumption. It is to check this menace that this fiction has been created.

In [2011-TIOL-1582-CESTAT-MAD](#), the CESTAT observed,

The scheme of the Customs Law does not provide for not charging duty on goods which enter the domestic territory of India irrespective of whether the goods are cleared for home consumption after regular assessment, or whether the goods remain uncleared and are subsequently sold by auction, or whether the goods are confiscated for any infraction and are subsequently disposed by the customs authorities by sale. Even jetsam and flotsam which come floating to the Indian shore have to be charged to duty as stipulated under Section 21 of the Customs Act. Once the scheme of Customs Law as enacted by the Parliament is understood, it becomes clear that Customs duty requires to be collected and paid to the public exchequer, on imported goods, whether the same is cleared after regular assessment, or is sold in auction after lying uncleared, or is sold after being confiscated, or is released on redemption fine after being confiscated.

In [2012-TIOL-360-CESTAT-MAD](#), the CESTAT observed,

Section 12 of the Customs Act, 1962, states that duties of customs shall be levied on goods imported into India. Section 21 of the Customs Act, 1962 states that all goods, (even) derelict, jetsam, flotsam and wreck brought or coming into India, have to be dealt with as if they were imported into India and have to pay duty unless they are entitled to be admitted duty-free.Â

So, it is confirmed that duty has to be paid, but who will pay the duty in the case of the mysterious-gold-coloured-chariot-like structure that drifted into India? Who is the importer? Eventually the chariot will have to be given/sold/transferred to somebody and that somebody will have to pay the duty. The Show Cause Notice will most probably contain allegations that:

1. The fact that the Cyclone Asani was going to hit the Eastern shores of India, was suppressed from the department.
2. Similarly, the fact that the chariot had decided to float into Indian shores was suppressed.
3. These facts came to notice only after the department started investigation and would have remained unknown, if the department had not recorded that voluntary statement in English from that illiterate fisherman in remote Srikakulam, who admitted to having pulled that chariot out of the sea.
4. Therefore, it is clear that there was intent to evade customs duty.

It is not yet known as to who will take possession of the chariot and what will happen to it. Maybe Customs and GST will have some roles to play, though they are not in the picture yet.

Until Next week