

A PANDURONGA TIMBLO INDUSTRIES ETC. ETC.

v.

UNION OF INDIA AND ORS.

MARCH 13, 1992

B [A.M. AHMADI AND K. RAMASWAMY, JJ.]

Constitution of India, 1950:

C *Schedule VII, List II, Entry 58—Tax on 'Barge'—Competency of State Legislature to enact Goa, Daman and Diu Barge Tax Act, 1973.*

Goa, Daman and Diu Barge Tax Act, 1973/Goa, Daman and Diu Barge Tax Rules, 1975:

D *Sections 2(1) and 3/Rules 6 and 7—Levy of tax on 'Barge'—Constitutional validity of—Barge—Meaning of—Constitution of India, 1950: Schedule VII, List II, Entry 58—General Clauses Act, 1897 : Section 3(55) and 3(63).*

Words and Phrases—Word 'Barge'—Meaning of.

E The constitutional validity of the tax levied on barges, used or kept
for use in the Union Territory of Goa, Daman and Diu, under Section 3 of
the Goa, Daman and Diu Barges Tax Act, 1973 was challenged by the
appellants, contending that the word 'boat' could not include a mechan-
ically propelled vessel, and since the definition of a 'barge' in section 2(1)
of the Act meant a mechanically propelled water craft used or capable of
F being used as a means of transport of minerals, it could not be termed as
a boat to attract the legislative power conferred by Entry 58 in List II of
the VIIth Schedule and the legislation was clearly incompetent; that from
the definitions of 'ship' and 'vessel' in Section 3(55) and 3(63) respectively
of the General Clauses Act, 1897, it was clear that a 'boat' was not a 'ship'
G but a vessel exclusively propelled by oars, and thus a boat was a small
vessel not mechanically propelled, but propelled exclusively by oars and
Entry 58 in List II of the VII Schedule could be invoked for levying a tax
on such a vessel, and not on a 'barge' which was a mechanically propelled
water craft; that the entire field in regard to mechanically propelled vessels
was covered by Entries 24, 25 and 27 of List I and Entries 31 and 32 of
H List III of the VIIth Schedule and, therefore, the scope of Entry 58 in List

II of the VIIth Schedule was clearly confined to vessels other than mechanically propelled vessels, like small boats, and, therefore, the word 'boat' in Entry 58 in List II must receive a narrow meaning and must be limited to a vessel exclusively propelled by oars. A

On behalf of the State, it was contended that the Legislature was competent to enact the Act by virtue of the power conferred by Entry 58 in List II of the VIIth Schedule to the Constitution of India, which permitted levy of 'taxes on animals and boats', and since barges were boats, the Legislature was competent to levy and collect the tax on barges. B

Dismissing the appeals, this Court, C

HELD 1.1 Boats of all descriptions can be taxed by the State Legislature by reason of the power conferred by Entry 58 in List II of the VIIth Schedule to the Constitution of India, 1950. [219H]

1.2 A 'barge' is a large flat-bottomed boat used for transporting heavy burdens on canals and rivers, but is not generally a ocean-going vessel. It may or may not be fitted with an engine depending on its calibration. It is essentially a freight-boat chiefly meant for canal and river-navigation. Barges can be of different sizes and may be propelled by oars, sails or engines. They, however, belong to the family of boats and not ships. Section 2(1) of the Act also defines it as a water craft mechanically propelled and used or capable of being used as a means of transport of minerals. Thus, the legislature has carved out only mechanically propelled barges for tax purposes. Therefore, the State Legislature was competent to tax it under Entry 58 of List II. [217G-H, 218A-C] D E

1.3 According to the General Clauses Act a 'ship' includes a vessel of every description used in navigation and not exclusively propelled by oars. A 'vessel', on the other hand, is a ship or a boat or any other description of vessel used for navigation. Therefore, a vessel which is exclusively propelled by oars would not fall within the definition of a ship but would be covered by the wider definition of a vessel. From these two definitions it cannot be inferred that a mechanically propelled vessel is not a boat for the simple reason that the definition of vessel is wide enough to include a ship which is mechanically propelled. Both the definitions are inclusive definitions and the definition of vessel is wide enough to include boats of every description, both mechanically propelled and those H

A propelled exclusively by oars. Further no distinction can be drawn on the basis of the size of the vessel. Merely because the Act and the Rules cover barges ranging from less than 100 tonnes to 350 tonnes and above, it cannot be said that such large sized vessels which are mechanically propelled cannot be called boats. Since barges are used for transporting heavy burdens on canals and rivers - inland waters - and for loading and unloading ships which are anchored away as they can not enter shallow waters, they are bound to be heavy vessels which can take the load. For that reason they do not cease to be flat-bottomed boats and in ordinary parlance they cannot be described as ships. [218D-E, G-H, 219A]

C 1.4 It is well-settled that the legislative entries must be interpreted widely unless the language of the entry or the context requires that it be given a narrow meaning. Neither the language of Entry 58 in List II nor the context in which the word 'boats' is used therein calls for confining its scope to boats exclusively propelled by oars. The language of Entries 24, 25 and 27 in List I and Entries 31 and 32 in List III do not justify a narrow meaning to be given to the word 'boats' in Entry 58 of List II. These entries have nothing to do with the subject of levy of tax on boats. [219D-E]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1511 of 1980.

E On appeal by Certificate from the Judgment and Order dated 29.4.1980 of the Judicial Commissioner, Goa, Daman and Diu in Special Civil Application No.26 of 1976.

WITH

F Civil Appeal No. 1973 & 2851 of 1980.

S.K. Mehta, Aman Vachher, Dhruv Mehta (NP), R.F. Nariman and Mrs. A. Verma for the Appellants.

G Bed Brat Barua, Ms. A. Subhashini (NP) and Ashok Bhan for the Respondents.

The Judgment of the Court was delivered by

H AHMADI, J. Is a barge a boat? The answer to this question will determine the challenge to the constitutional validity of the tax levied

on a barge under the Goa, Daman and Diu Barge Tax Act, 1973 (hereinafter called 'the Act'). It is contended that the State Legislature was competent to enact the Act by virtue of the power conferred by Entry 58 in List II of the VIIth Schedule to the Constitution of India which permits levy of 'taxes on animals and boats'. If barges are not boats, the Act will lose the cover provided by the said entry and will be rendered unconstitutional.

The Act, as the Preamble shows, was enacted to impose a tax on barges in the Union Territory of Goa, Daman and Diu and for matters connected therewith and was brought into force with effect from 1st March, 1971. 'Barge' according to section 2(1) means every description of water craft mechanically propelled and which is used or is capable of being used as means of transport of minerals. Section 3 which is the charging section provides that there shall be levied and collected on all barges used or kept for use in the Union Territory, a tax at the rates fixed by the Government, by notification in the Official Gazette, but not exceeding the maximum rates specified in the Schedule to the Act. The Schedule to the Act reads as under :

SCHEDULE
(Section 3)

Capacity of Barge	Maximum annual rate per tonne
Less than 100 tonnes	Rs. 3.50
100 tones and less than 200 tonnes	Rs. 5.00
200 tonnes and less than 350 tonnes	Rs. 6.00
350 tonnes and above	Rs. 7.50

Note : When tax is not paid for the whole year at a time, but is paid for one or more quarters at a time, the tax so payable for each quarter shall be an amount equal to one-fourth of the annual tax plus ten per cent of that amount."

Section 19 empowers the Government to make rules to carry out the purposes of the Act. In exercise of the said power the Government by a notification framed rules called the Goa, Daman and Diu Barge Tax Rules,

- A 1975. Rule 6 lays down that every owner or the person having possession or control of a barge in the Union Territory shall pay to the Government a tax at the rates specified in the table below :

TABLE

B	Capacity of Barge	Rate of tax payable per annum per tonne
	Less than 100 tonnes	Rs. 3.50 p.
	100 tonnes and less than 200 tonnes	Rs. 5.00 p.
C	200 tonnes and less than 350 tonnes	Rs. 6.00 p
	350 tonnes and above	Rs. 7.50 p.

- The rates which have been specified are the same as specified in the Schedule to the Act. For the purpose of levy of tax under rule 7, the Taxation Authority may require the barge to be calibrated i.e. identify the carrying capacity with reference to its structural strength, reserve buoyancy and safe working height above water level. Rule 8 lays down the mode of payment. Rule 9 provides for the issue of tax licence and Tax Token and rule 10 provides for levy of penalty for failure to pay the tax. Rule 11 empowers the seizure and detention of any barge with respect to which the tax is due under the Act, until the tax due in respect of the barge is paid.
- D Provision is also made for refund of tax in certain circumstances. It will thus be seen from the relevant provisions of the Act and the Rules that the State Government has levied a tax on all barges used or kept for use in the Union Territory of Goa, Daman and Diu. The Government contends that since barges are boats, the State Legislature was competent to levy and collect a tax on barges under entry 58 in List II of the VIIth Schedule to the Constitution.
- E
- F

- Counsel for the appellants contended that the word 'boat' cannot include a mechanically propelled vessel and since the definition of a 'barge' in section 2(1) of the Act means a mechanically propelled water craft used or capable of being used as a means of transport of minerals, it cannot be termed as a boat to attract the legislative power conferred by Entry 58 in List II of the VIIth Schedule and hence the impugned legislation is clearly incompetent. Reference was also made to the definitions of 'ship' and 'vessel' in sections 3(55) and 3(63) of the General Clauses Act to buttress the submission that a boat cannot include a mechanically propelled vessel.
- G
- H

We may reproduce the said two definitions at this state:

"3(55) – 'Ship' shall include every description of vessel used in navigation not exclusively propelled by oars"

"3(63) – 'Vessel' shall include any ship or boat or any other description of vessel used in navigation."

It was submitted that the position of the word 'boat' immediately next to the word 'vessel' in the definition in section 3(63) is clearly indicative of the fact that 'ship' and 'boat' convey two different meanings since the definition of 'ship' does not include vessel exclusively propelled by oars. From these two definitions it was contended that a 'boat' is not a 'ship' but is a vessel exclusively propelled by oars. Thus according to the learned counsel for the appellants a boat is a small vessel not mechanically propelled but propelled exclusively by oars and Entry 58 in List II of the VIIth Schedule can be invoked for levying a tax on such a vessel and not on a 'barge' which, as the definition in section 2(1) of the Act conveys, is a mechanically propelled water craft. This was the first limb of counsel's submission. The second limb of his submission was based on the scope and ambit of Entries 24, 25, and 27 of List I and Entries 31 and 32 of List III of the VIIth Schedule. Counsel submitted that the entire field in regard to mechanically propelled vessels was covered by these entries and, therefore, the scope of Entry 58 in List II of the VIIth Schedule was clearly confined to vessels other than mechanically propelled vessels like small boats. Therefore, counsel submitted that the word 'boat' in Entry 58 in List II must receive a narrow meaning and must be limited to a vessel exclusively propelled by oars. In order to appreciate this contention based on the various entries in List I and List III above, it may be appropriate to read those entries at this stage:

"List I

Entry 24 – Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways.

Entry 25 – Maritime, shipping and navigation, including shipping and navigation on tidal waters; provision of education and

A training for the mercantile marine and regulation of such education and training provided by States and other agencies.

B Entry 27 – Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation, and the constitution and powers of port authorities therein.

List III

C Entry 31 – Ports other than those declared by or under law made by Parliament or existing law to be major ports.

D Entry 32 – Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national waterways.”

Now before we proceed to answer the contentions urged by the learned counsel for the appellants. It may be advantageous to notice the dictionary meanings of the words ‘barge’, ‘boat’, ‘ship’ and ‘vessel’ used in the aforementioned legal provisions.

E “ODHAM’S ENGLISH DICTIONARY

F Barge : a large flat-bottomed boat for transporting heavy burdens on canals or rivers; a large flat-bottomed boat used in loading and unloading ships; a boat for the use of the chief officers of a man-of-war; a large richly decorated boat of state propelled by oars and used on ceremonial occasions: a college house-boat.

G Boat : a long symmetrically shaped hollow vessel or receptacle that floats upon water, is propelled either by oars, the action of wind on sails, or by mechanical means, and which is used as a means of transport.

Ship : a large ocean-going vessel.

H Vessel : a ship

OXFORD ENGLISH DICTIONARY

Barge : a flat-bottomed freight-boat chiefly for canal and river-navigation, either with or without sails; a rowing boat; esp. a ferry-boat. A

Boat : a small open vessel in which to traverse the surface of water, usually propelled by oars, though sometimes by a sail. B

Ship : a large sea-going vessel (opposed to a boat);

Vessel : any structure designed to float upon and traverse the water for the carriage of persons or goods; a craft or ship or any kind, now usually one larger than a rowing-boat and often restricted to sea-going craft or those plying upon the larger rivers or lakes. C

BLACK'S LAW DICTIONARY

Barge : name originally applied to a small sailing vessel but afterwards came into general use for a flat-bottomed boat used for carrying goods on inland waterways. Barges are usually towed or fitted with some kind of engine. D

Boat : a small open vessel, or water craft, usually moved by oars or rowing. E

Ship : a vessel of any kind employed in navigation. In a more restricted and more technical sense, a three-masted vessel navigated with sails.

Vessel : a ship, brig, sloop or other craft used in navigation. The word in its broadest sense is more comprehensive than 'ship'. Any structure which is made to float upon the water, for purposes of commerce or war, whether impelled by wind, steam, or oars." F

It is clear from aforementioned meanings that a 'barge' is a large flat-bottomed boat used for transporting heavy burdens on canals and rivers but is not generally a ocean-going vessel. It may or may not be fitted with an engine depending on its calibration. All the three aforequoted dictionaries have described it as a flat-bottomed boat used for carrying goods or minerals on inland waterways. It is essentially a freight-boat chiefly meant for canal and river-navigation. Barges can be of different G

H

- A sizes and may be propelled by oars, sails or engines. They, however, belong to the family of boats and not ships. The learned Judicial Commissioner has rightly concluded that a 'barger' is a flat-bottomed freight boat used on rivers and canals and propelled by oars, sails or engines. Section 2(1) of the Act also defines it as a water craft mechanically propelled and used or capable of being used as a means of transport of minerals. Thus the
- B legislature has carved out only mechanically propelled barges for tax purposes. It would, therefore, seem that the State Legislature was competent to tax it under entry 58 of List II.

- C True it is that the dictionaries have described a 'boat' as a small open vessel usually propelled by oars, though sometimes by sail also. According to the General Clauses Act a 'ship' shall include a vessel of every description used in navigation and not exclusively propelled by oars. A vessel on the other hand is a ship or a boat or any other description of vessel used for navigation. Therefore, a vessel which is exclusively propelled by oars would not fall within the definition of a ship but would be covered by the
- D wider definition of a vessel. From these two definitions it cannot be inferred that a mechanically propelled vessel is not a boat for the simple reason that the definition of vessel is wide enough to include a ship which is mechanically propelled. Both the definitions are inclusive definitions and the definition of vessels is wide enough to include boats of every description, both mechanically propelled and those propelled exclusively by oars.
- E There is no warrant for the argument that because the word 'ship' and the word 'boat' are placed side by side, the latter refers to only boats exclusively propelled by oars and not boats fitted with engines. To place such an interpretation would lead to the absurd situation of a small boat propelled by sail being called a ship. It would mean that a boat exclusively propelled
- F by oars would cease to be a boat the moment it is fitted with a sail. The definition of vessel, in our view, is wide enough to cover both boats propelled exclusively by oars as well as boats fitted with engines. Nor can any distinction be drawn on the basis of the size of the vessel. Merely because the Act and the Rules cover barges ranging from less than 100 tonnes to 350 tonnes and above, it cannot be said that such large sized
- G vessels which are mechanically propelled cannot be called boats. The definition of a 'barge' in the dictionaries aforementioned clearly show that barges are flat-bottomed boats meant for carrying goods on inland waters and are usually fitted with engines. Since they are used for transporting heavy burdens on canals and rivers – inland waters – and for loading and
- H unloading ships which are anchored away as they cannot enter shallow

waters, they (barges) are bound to be heavy vessels which can take the load. For that reason they do not cease to be flat-bottomed boats and in ordinary parlance they cannot be described as ships. We are, therefore not impressed by the submission that Entry 58 in List II must be confined to boats which are exclusively propelled by oars. We think the learned Judicial Commissioner was perfectly justified in rejecting the submission and we respectfully agree with his line of reasoning.

This very submission was sought to be supported with reference to the entries in List I and List III set out hereinabove. Now it must be remembered at the out set that Entry 58 in List II deals with taxes on boats and we see no warrant to limit the same to boats propelled exclusively by oars. It is settled law that legislative entries must be interpreted widely unless the language of the entry or the context requires that it be given a narrow meaning. Neither the language of Entry 58 in List II nor the context in which the word 'boats' is used therein calls for confining its scope to boats exclusively propelled by oars. We also do not think that the language of Entries 24, 25, and 27 in List I and Entries 31 and 32 in List III would justify a narrow meaning to be given to the word 'boats' in the Entry 58 of List II. The entries relied upon have nothing to do with the subject of levy of tax on boats. Entry 24 in List I deals with the subject of shipping and navigation on inland waterways declared to be national waterways, the rule of the road as such waterways and Entry 25 in List I deals with maritime shipping and navigation. The use of the expression 'mechanically propelled vessels' in Entry 24 cannot restrict the ambit of Entry 58 in List II to vessels exclusively propelled by oars. On the contrary it restricts the scope of Entry 24 itself and confines its application to mechanically propelled vessels. Both the Entries 24 and 25 of List I and Entry 32 in List III concern shipping and navigation and have nothing to do with the question of levy of tax on boats. Entry 27 in List I deals with Ports and so does Entry 31 in List III and it is difficult to appreciate how it can legitimately be contended that these entries cut down the scope of Entry 58 in List II. The entries from List I and III relied upon operate in their own fields and do not entrench upon the subject covered by Entry 58 in List II. The learned Judicial Commissioner was, therefore, right in concluding that boats of all description can be taxed by the State Legislature by reason of the power conferred by Entry 58 in List II of the VIIth Schedule.

For the above reasons we are satisfied that the view taken by the

A learned Judicial Commissioner is correct and does not call for interference. Therefore, these appeals on certificate issued under Article 133(1) of the Constitution must fail. We, therefore, dismiss them but having regard to the facts and circumstances of the case of each matter we think it would be advisable to direct each party to bear its own costs.

N.P.V.

Appeals dismissed.