

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
I.A. 21 OF 2005
IN
WRIT PETITION (CIVIL) No.657 of 1995

IN THE MATTER OF

The Research Foundation for Science
Technology & Natural Resources PolicyPetitioner

Versus

Union of India & others Respondents

AND IN THE MATTER OF

Madhumita DuttaApplicant

Affidavit on behalf of the Monitoring Committee in Terms of the
Order dated 12th September, 2005.

I, M. Subba Rao, Additional Director, Ministry of Environment
and Forest, Paryavaran Bhawan, New Delhi 110003, do hereby solemnly
affirm and state as under:

That I am working as an Additional Director in the Union
Ministry of Environment and Forests, Government of India and also as
Member Secretary of the Monitoring Committee and as such am well
conversant with the facts and circumstances of the case. I am competent
and authorized to swear this affidavit on behalf of the Monitoring
Committee and am filing this affidavit in terms of the order of this
Hon'ble Court dated 12-09-2005 in the above matter.

1.1 I say that Ms .Connie Hedegaard, Hon'ble Minister for the
Environment, Danish Government vide her letter dated 15th April, 2005
informed Government of India that a vessel known as "Kong Frederik
IX", which had left Denmark on 16th March, 2005, is traversing through

Red Sea and further towards Western Indian coast for dismantling and that the ship is 51 years old and carrying asbestos which is used as insulation of the machinery. She contended that in terms of Basel Convention Article 2, Paragraph 1 and Danish Legislation on waste, the ship must be characterized as waste and transboundary movement of hazardous waste without prior notification should be deemed as illegal waste traffic. Her contention was that in view of the violations of the Basel Convention and Danish law as also on the basis of her knowledge about the developments in the matter of Writ Petition No.657 of 1995 in the Indian Supreme Court and SLP (C) No.16175/1997 and C.A.No.7660/1997, the dismantling of the ship should be denied and it should be returned to Denmark to be stripped of the hazardous waste. The Government of India through the Hon'ble Minister for Environment replied to this letter on 28th April, 2005. While duly noting the concern expressed by the Danish Government, Indian Government informed her that having considered all things, Government of India had determined that the ship cannot be classified as "waste" within the scope of Article 2.1 of the Basel Convention. He also pointed out that the joint visit report of Gujarat Maritime Board, Gujarat Pollution Control Board and the Central Pollution Control Board who had inspected the vessel indicated that there was no hazardous waste material on the ship. Accordingly, the said ship, now called "Riky" with the Registration of the Democratic People's Republic of Korea had been beached on the 23rd April 2005 at Alang, Gujarat. It was also pointed out that the ship had only inbuilt insulation materials, which are part of the structure of all ships. It was contended that as per Indian Law and Government of India's position under the Basel Convention, the ship had the required permission for beaching. The Government of India also

assured the Danish Ministry that India has adequate capacity to ensure environmentally sound disposal of the said ship. In view of this position, the contention of the applicant that the ship was carrying hazardous substances within the scope of Article 2.1 of the Basel Convention is not true and hence denied. It is also not true that Government of India's decision in this regard violates the Order dated 14th October, 2003 by the Hon'ble Supreme Court, as discussed hereinafter. It is denied that the decision of Govt. of India is in violation of Articles 1.1, 6 and 9 of the Basal Convention since these articles deal with the hazardous wastes while ships destined for breaking are not defined as hazardous waste in the convention. It is also denied that there has been any breach of the Hazardous Wastes (M & H) Rules 1989, since there is no hazardous waste cargo on board of the ship. In fact Basal Convention has not defined "ship destined for dismantling" as Hazardous Waste. However, the convention recognized the need for environmentally sound practices to be followed for ship breaking and the convention has come out with the guidelines which were adopted by the 6th Conference of Parties (COP). India supported these guidelines and also extended its cooperation in preparation of these guidelines by Norway. Further, the matter is also under consideration of the joint group of ILO, IMO and Basal Convention to deal with other aspects such as labour, work environment etc.

The HPC under the chairmanship of Prof. M.G.K. Menon also dealt with this issue in detail and the recommendations of HPC were accepted by this Hon'ble Court, as contained in the order of 14.10.2003. There is no violation of these orders in the instant case. All actions are being taken by the concerned authorities as per the existing guidelines.

1.2 I say that the necessary permissions were given for beaching by the Customs Department and Gujarat Maritime Board as per their respective laws. The Superintendent of Customs Division, Bhavnagar issued "No Objection" for beaching of the vessel 'Riky' and endorsed a copy of the same to the Port Officer, Gujarat Maritime Board, Ship Breaking Yard, Alang. Subsequently the ship breaker approached the Gujarat Maritime Board requesting for beaching permission. The Port Officer of Gujarat Maritime Board at Alang by his order of 23-4-2005 gave permission for beaching the vessel with certain conditions and the vessel was beached on 23.4.2005.

2. I say that the applicant has contended in Para 2 that she has been actively engaged in the field of advocacy and campaigns for environmental protection and health, occupational health etc., The deponent is not aware of the averments made in this Para.

3. I say that the applicant claims that her Writ Petition concerns the issue of proper management of hazardous wastes and implementation of the Hazardous Waste (Management and Handling) Rules, 1989 and has also referred to the directions of the Hon'ble Supreme Court that no permission shall be granted for import of hazardous wastes which have been banned by the Basel Convention. It is submitted that the present case is not regarding import of hazardous waste. It is submitted that as mentioned in Para 1 hereinabove, the ship brought for dismantling cannot be considered as hazardous waste in terms of Basel Convention, Hazardous Waste (Management & Handling) Rules, 1989 or the Order

dated 14-10-2003 of the Hon'ble Supreme Court. On the contrary, the Hon'ble Apex Court has permitted ship-breaking activity in the country subject to compliance of various directions mentioned in the said order of the Apex Court and no violation in this regard has taken place in the instant case. The averments made in Para 3 of the application are, therefore, untrue and hence denied.

4. I say that the contention in Para 4 that the import of a ferry ship named 'RIKY' for scrapping in the ship breaking yard at Alang in Bhavnagar District in the State of Gujarat is illegal and is in clear violation of Basel Convention, the Hazardous Waste (Management & Handling) Rules, 1989 and various orders of the Hon'ble Supreme Court including the order dated October 14th, 2003 is not true since there was no violation in bringing the ship or in giving the required permission for its beaching and breaking. The contention that the ship itself is hazardous waste under the Hazardous Waste (Management & Handling) Rules, 1989 is entirely erroneous because under the Rules a ship destined for breaking it was not defined as hazardous waste and having some inbuilt insulation material, which is the case with each and every ship does not render the ship as hazardous waste. The Hon'ble Supreme Court has permitted the ship breaking activity in the country subject to certain conditions in order to ensure that this activity is carried out in an environmentally sound manner.

5. I say that the contention of the applicant in Para 5 that the entry and subsequent beaching of the ship were allowed by the Indian authorities with the full knowledge of the hazardous material on board the ship present as part of the ship's structure is a contradictory statement and

it is misleading. The applicant admits that there was no hazardous material on board the ship and the inbuilt insulation material which is part of the structure of the ship cannot be termed as hazardous waste. As a matter of fact, in the process of dismantling of the ship (approximately 40% has been dismantled by now), the asbestos, which has come out so far as insulation material of the pipes is only about 150 kgs. It had been verified by the concerned authorities that the ship was not carrying asbestos or any other material classified as hazardous waste on board the ship other than what is there as inbuilt insulation material. The averments made in this Para are, therefore, incorrect and hence denied.

6. I say and submit that with regard to Para 6 of the applicant, it is submitted that when the ship called at Alang Port, it had the name 'Riky' and had come with the Registration of Democratic People's Republic of Korea and was flying the flag of that country.

7. I say that the averments of the petitioner that the ship contained in its structure several tons of cancer causing substances like asbestos, Poly Chlorinated Biphenyls (PCBs) and other toxic materials is incorrect. The data of the waste recovered so far from the structure of the ship which was present in the ship as in-built material (both hazardous and non-hazardous) is given below:

| <u>Non-Hazardous</u> | | <u>Hazardous</u> | |
|----------------------|----------|------------------|---------|
| 1. Rubber Plastic | 295 kg. | 1. Asbestos | 150-kg. |
| 2. Glass Wool | 555 kg. | 2. Paint Chips | 185-kg. |
| 3. Ceramic glass | 865 kg. | | |
| 4. Others | 290 kg. | | |
| | ----- | | ----- |
| Total: | 2005 kg. | Total: | 335 kg. |
| | ----- | | ----- |

It may be submitted here that as reported by the Gujarat Pollution Control Board, asbestos and paint chips which have been recovered so far have been solidified from time to time, transported and disposed of at the Treatment, Storage and Disposal Facility (TSDF) developed at Ahmedabad as required under the Hazardous Waste (Management & Handling) Rules, 1989 as amended.

8. I say that with regard to the averment in Para 8, it is submitted that the Government of India had duly considered the letter of the Minister of Environment of Denmark and suitably responded, stating that under the Indian Law and the position taken by Government of India under Basel Convention, no violation had taken place.

9. The averment of the applicant that Government of India chose to ignore the request of the Danish Government and adopted an untenable position is denied. The Government of India in responding to the Danish Government had considered the Basel Convention, the Hazardous Waste (Management & Handling) Rules, 1989 as amended and the directives of the Supreme Court contained in its order dated 14-10-2003.

10. I say that the averment made in Para 10 defining the ship as hazardous waste is misconceived and misleading because ship is not defined as hazardous waste anywhere in the Basel Convention. The averment that the Basel Convention seeks to define hazardous wastes, minimize its generation, dispose of them as close to the source of

generation and to reduce the transboundary movement of hazardous wastes, needs to be considered in the light of the Supreme Court direction permitting the ship breaking activity subject to having the necessary infrastructure for ensuring environmentally sound method of ship breaking and waste management. The ship breaking activity is aimed at recovery of resources and this way, the recovered material is further used for manufacture of value added products. If Steel is to be produced from Iron-ore, the investment required as well as pollution quotient would be significantly higher than the recovery of Steel from ship breaking activity. The latest thinking about waste management is moving away from "end of pipeline treatment" to the principle of 3 R. - Reduce, Recycle and Reuse. In terms of pollutants like Sulphur Dioxide , Slag etc, the primary production of steel will have very high generation of waste per ton of steel production whereas in ship breaking activity, such waste generation per ton of steel production is much less. At Alang, under the directions of the Hon'ble Supreme Court, every ship is broken in a manner compatible with minimum pollution generation and Alang to-day has all the required infrastructural facilities to cope with the situation.

11. I say with regard to the averment made in Para 11 that under Basel Convention, the export of hazardous waste is banned if the waste in question will not be managed in an environmentally sound manner, that in this case; there has not been any import of hazardous waste as mentioned by the applicant and so the very basis of this averment is misleading. It appears that the applicant is making a vain attempt to bring ship under the definition of hazardous waste and for that purpose quoting some sections from Basel Convention, which are out of context to the present case. In

the entire process leading to breaking of 'Riky', the directions of Hon'ble Supreme Court have been complied with by taking all practicable steps to ensure that the ship is broken in a manner to protect the human health and environment. Alang has adequate capacity for ship breaking in an environmentally sound manner. Moreover, it is also submitted that the plot owner (ship breaker under reference) has obtained ISO 14001 as well as OSHAS-18000 indicating commitment of 'a high level for environment, health & safety'.

12. I say and submit that the contents of Para 12 are totally denied as this is not a case of import of hazardous waste and the averments made are irrelevant to the case under reference.

13. I say that the averment made in Para 13 is not true. I further submit that ship destined for breaking is not a waste. Ship breaking is carried out only for recycling and reclamation of metals and other re-usable materials.

14. I say and submit that it is clear that the ship 'Riky' cannot be categorized as hazardous waste and it did not carry any hazardous waste on board the ship. It is also submitted that the waste coming out of the structure of the ship is managed in accordance with Hazardous Waste Rules and the directions of the Supreme Court as submitted hereinabove. Therefore, the contentions in Para 14 are irrelevant and hence denied.

15. I say that it is entirely wrong to contend that the ships destined for ship breaking are within the definition of "wastes" under Basal

Convention. It is submitted that the Supreme Court Order dated 14.10.2003 in Writ Petition No.657 of 1995 does not prohibit ship breaking activity and stipulates certain guidelines/conditions to be followed as recommended by the Menon Committee for ship breaking.

16. I say that as already submitted, the Government of India has taken the view with regard to the ship breaking activity consistent with the law of the land and also the position taken by Government of India with regard to Basel Convention and so, any inference sought to be drawn from some provisions of the Basel Convention in this Para are contrary to the position of the Government of India and hence denied.

17. I say that the averment made in Para 17 is incorrect because the points raised by Danish Minister were suitably replied by the Government of India. If Danish Government had any further reservation in this matter, they were free to raise any issue that they considered necessary. However, no such further reference from Danish Government came up in the matter.

18. I say that the Hazardous Waste (Management & Handling) Rules, 1989 and the rules under Customs Act and other relevant local rules such as those notified by Gujarat Maritime Board and the detailed directions of the Supreme Court were the guiding principles for the Indian authorities to take an appropriate view with regard to allowing beaching of the ship 'Riky' and for taking further necessary action. As already submitted, these provisions have been followed by concerned authorities, who have been asked by this Hon'ble Court to file separate affidavit in this regard. Indian Government has not acted in violation of any statutory provisions

or directions of the Supreme Court with regard to the beaching of the ship 'Riky'. Therefore, the contentions in Para 18 are untrue and hence denied.

19. I say that as already stated in the aforesaid paras, the Custom Authority had given 'No Objection' and subsequently the Gujarat Maritime Board granted necessary permission for beaching. Both these authorities have detailed set of regulations and they are responsible to implement those regulations before granting the clearance for beaching.

20. I say that the contention in Para 20 that this was hazardous waste is entirely untrue, because the ship is not a hazardous waste as such and as already submitted, the Hon'ble Supreme Court has permitted the ship breaking activity subject to the directions given by it.

21. I say that as already submitted in earlier paras, the concerned authorities have acted in accordance with the respective regulations in allowing the beaching of the ship.

22. I say that the contention in Para 22 that Government of India has refused to cooperate with the Government of Denmark in decontaminating the ship of hazardous wastes like asbestos and also runs against the directions of the Hon'ble Supreme Court is contrary to the facts and hence denied in view of what is stated hereinabove.

23. I say that the averment in Para 23 with regard to the breach of the provision contained in the Hazardous Waste (Management & Handling) Rules, 1989 as amended in 2000, and 2003 that "Any occupier importing

or exporting hazardous wastes shall provide detailed information in form 7A to the Customs authorities" is untrue, because there was no question of import of hazardous waste in this case, as stated in the earlier paras.

24. I say that the averment in Para-24 that Gujarat Pollution Control Board has violated any CPCB guidelines or any Supreme Court direction is not true since there is no such guideline that the State Pollution Control Board is required to carry out inspection before beaching of the ship. The authority who inspected the ship did not find any hazardous waste on Board. SPCB is not the authority to grant beaching permission; but it is given by the Gujarat Maritime Board. The role of the SPCB is to give decontamination certificate before granting of the beaching permission, after ensuring the compliance of the Supreme Court directions with regard to decontamination certificate.

The Sub-Committee of SCMC for Gujarat visited Kandla Port and Alang Ship Breaking Yard during 21st and 22nd of March, 2005. The SCMC in its 9th meeting held on 28th March, 2005 took note of the fact that the Ship Breaking Yard, Plots and the Beach were found to be much cleaner as compared to the conditions they had noticed during their earlier visits. The SCMC, among other things had also kept in mind this substantial improvement in the overall arrangements at Alang while taking the decision under question, as it was evident that the ship breaking at Alang was going on in an environmentally sound manner. A secured land fill facility at Alang is now constructed and is ready for commissioning. In the meantime, arrangements with TSDF facility at Naroda Enviro Protection Limited (NEPL), Odhav, Ahmedabad are existing for safe

storage and disposal of hazardous waste generated by ship breaking. All the issues relating to arrival of the ship and its beaching at Alang were discussed by the SCMC at its 10th meeting held on June 1-3, 2005 at Shillong. A copy of the relevant extract of the minutes of the meeting is given as Annexure-R1. After detailed discussions, it was decided that since the ship was allowed for beaching with the approval of the concerned local authorities and in accordance with the Government of India's position under Basel Convention, breaking of the ship should be done under the supervision of the officials of Gujarat Pollution Control Board and the Central Pollution Control Board to ensure strict compliance to all the directions given by the Supreme Court relating to ship breaking activity. Accordingly, the breaking of the ship was started on 12th August 2005 in the presence of the officers from Gujarat Pollution Control Board and Central Pollution Control Board and they have been closely watching the operations, and the materials coming out from the ship and the way hazardous waste is treated and disposed of.

25. I submit that with regard to Paras 25 to 29, the Supreme Court Monitoring Committee had fully deliberated the issues in its 10th meeting held at Shillong pertaining to the arrival, beaching and dismantling activities of the ship and in this process the Committee also has taken into consideration the issues raised by the applicant through e-mail to the Chairman of SCMC.

26. I say that the contention in Para 30 is totally erroneous and denied since this was not an illegal movement of hazardous waste as already submitted in the foregoing paras.

27. I submit that with regard to Paras 31 and 32, there was no question of contravening the laws of the land and the Basel Convention on the part of Supreme Court Monitoring Committee in arriving at the decision under reference.

28. I submit that with regard to Para 33, in view of the submissions made in the foregoing paras, there is no question of conducting any enquiry because there was no illegal movement of hazardous waste as alleged by the applicant.

29. I say that with regard to Para 34, as submitted in aforesaid paras, beaching of 'Riky' does not contravene any of the provisions of Basal Convention or the laws of the land and the directions of the Supreme Court.

30. I say that with regard to Para 35, that the ship is not defined as hazardous waste and Hon'ble Supreme Court has permitted ship-breaking activity as per the order dated 14-10-2003, therefore there is no question of Gujarat Maritime Board permitting ships to be broken as waste in contravention of the law. Hence the averments made by the applicant in this Para are denied.

31. That in the light of the submissions made in the above paragraphs hereinabove, it is respectfully prayed that none of the prayers made by the applicant deserve any consideration whatsoever in this matter. It is also submitted that the applicant has misinterpreted various provisions and

made an attempt to mislead this Hon'ble Court and malign various authorities. Hence the application is liable to be dismissed with costs.

Deponent

Verification:

I, the above named deponent do hereby verify that the contents of Para Nos.1 to 30 of the above affidavit are true and correct to the best of my knowledge derived from the records of the case maintained in the office and nothing material has been concealed therefore.

Verified at New Delhi on this 27th day of September, 2005.

Deponent

Extract from the minutes of the 10th meeting of the Supreme Court Monitoring Committee (SCMC) held during June 1-3, 2005 at Shillong

Ship Breaking Activities:

A detailed note on the ship breaking activities in India prepared by the Ministry of Environment & Forests was circulated to all the Members. The SCMC discussed the issue of ship breaking activity with particular reference to the ship "Riky" of Danish origin which arrived at Alang under the flag of Roxa with the registration issued by that country. Chairman, Gujarat Pollution Control Board (GPCB) explained to the Members that after he received the information through Press reports, a team of officers, drawn from Central Pollution Control Board's Office at Vadodara and GPCB, had inspected the ship which had already beached at Alang after obtaining due permissions from the Customs authorities at Bhavnagar and the Gujarat Maritime Board. He also confirmed that in response to a communication received from the Ministry of Environment & Forests, the inspection report and the connected papers were forwarded to the Ministry of Environment & Forests seeking guidance in view of the sensitive nature of the issue and that no breaking permission has been granted by the GMB in this regard.

2. The Chairman, GPCB, also observed that having regard to the issues raised, two questions, namely, (i) whether the ship arrived legally and (ii) whether due procedures have been followed before allowing beaching of the ship, need consideration. These issues were also raised by the Chairman, SCMC and Dr. Claude Alvares.

3. The first question was discussed in the context of Basel Convention and various practices followed in the high sea auction, vis-à-vis, the Indian laws. It was clarified that the Ministry of Environment & Forests had examined these aspects in detail and accordingly, the Minister for Environment & Forests had already replied to the Danish Minister for Environment clarifying the matter.

4. With regard to the observance of the rest of the laid down procedures, it transpired that on the basis of the inventory verified by the Customs Department, the Gujarat Maritime Board (GMB) had granted beaching permission to the ship. However, GPCB has not yet given the decontamination certificate which is the necessary requirement for granting of cutting permission by the GMB. Chairman, GPCB, informed that GMB has been advised not to grant the permission for dismantling the ship pending clarification by the MoEF. It was clarified by the representative of MoEF that as the Minister for Environment & Forests has already replied to the Danish Minister for Environment informing him that as per the Indian Laws and our position under the Basel Convention and the IMO, the ship has the requisite permissions for beaching and that India has adequate capacity to ensure environmentally sound disposal of the said ship. It was suggested to the Chairman, GPCB that on the basis of this clarification he may take further necessary action in the matter.

5. The SCMC, after considering all the above mentioned aspects of the matter, felt that this case must be dealt with utmost caution to ensure that all the conditions laid down by the Supreme Court in its judgment of October, 2003 for ship breaking activities are scrupulously followed. It was, therefore, decided that both Central Pollution Control Board and GPCB should depute their officers to be present on the spot while breaking the ship, initially for the first week and thereafter, once in a week.

IN THE
HON'BLE SUPREME COURT OF INDIA

I.A. NO. 21 OF 2005

IN THE
WRIT PETITION (CIVIL) NO. 657 OF 1995.

IN THE MATTER OF

Research Foundation
for Science Technology

National Resource Policy--- --- Petitioner

Versus

Union of India & Anr----- Respondents

AND IN THE MATTER OF

Madhumita Dutta,
Wife of Rakesh Kalshian,
R/o B-1/30, Paschim Vihar,
Delhi-110063. --- --- Applicant.

Versus

1. Union of India
Through Secretary,
Ministry of Environment & Forest,
Paryavaran Bhavan, CCO Complex,
New Delhi.

2. State of Gujarat,
Through Chief Secretary
Sachivalaya, Gandhinagar
Gujarat. --- --- Respondents

AFFIDAVIT BY THE ASSISTANT
COMMISSIONER OF CUSTOMS, CUSTOMS
DIVISION, BHAVNAGAR.

=====

1. I, N. B. Deshmukh, Assistant
Commissioner, Customs Division,
"Gurukrupa" Building, Parimal Chowk,
Waghawadi Road, Bhavnagar, do hereby
solemnly affirm and state as under: -

2. That I am working as the
Assistant Commissioner, Customs
Division, Bhavnagar. I am conversant
with the facts and circumstances of the
case. Till October-2002, the Ship
Breaking Yard-Alang of the Customs
Division Bhavnagar, was under the
jurisdiction of Customs Commissionerate,
Ahmedabad. Subsequently in November-
2002, on bifurcation of the Ahmedabad
Customs Commissionerate, The division
is placed under the jurisdiction of
Commissioner of Customs(Preventive),
Jamnagar. An Assistant Commissioner
heads the Customs Division, Bhavnagar
and looks after the customs work of Ship



Breaking Yard, Alang. Thus, I am fully conversant with the facts of the case. In view of this, I am filing this affidavit in terms of the order of this Hon'ble Court, Dated 12.09.2005 in the I.A. 21 of 2005, whereby the Joint Commissioner of Customs, Ahmedabad was directed to file a response on the above-mentioned application.

3. I deny and dispute and controvert the facts stated, contentions raised and the grounds averred in this application as far as it relates to the Customs and any of the averments and contention raised in this application, which are not dealt with by me specifically in this reply, may not be construed as my having admitted the truthfulness thereof. I have dealt with the application paragraph-wise, so far as possible. I hereby reserve my right to pray for liberty to file further affidavit, if so required hereafter.

4. With reference to Para 1.1 of the application, I say and submit that the



ship RIKY had arrived at Alang Ship Yard for breaking purpose on 23.04.2005. I further submit that the ships destined for breaking up are freely allowed in terms of EXIM Policy 2002-07. They are not prohibited under Section 11 of the Customs Act, 1962. Furthermore, the ships for breaking up are not Hazardous Waste in terms of Rule 3(14) of Hazardous Waste (Management & Handling) Rules, 1989. I further state and submit that the Hon'ble Supreme Court has, vide Order dated 14.10.2003, at Page No. 45 thereof have held, under sub para (17) of para 70.2 (2), that

"(17) the continuation or expansion of the Alang Ship Breaking Operations should be permitted subject to compliance with the above recommendations by the plot holders".

In the same order, at para 58, the Hon'ble Supreme Court has ruled at Page No. 36 that,



"58. Another aspect which deserves to be noticed is about the effect of ship breaking activity covered under (TOR) Terms of Reference No. 14. We are not suggesting discontinuing of the ship breaking activity but it deserves to be strictly and properly regulated.

5. With reference to para 1.2 of the application, I state and submit that in this case, the Shipping Agent had given a ship arrival notice to the Customs Authority on 19-04-2005, copy of which was also endorsed to other concerned authorities. On 21.04.2005, a fax message dated 21.4.2005, was received in the Custom Office, Bhavnagar from Central Pollution Control Board, Vadodara- informing that the ship named "Kong Fredrik IX" (previous name of ship MV. RIKY), arriving at Alang, is suspected of carrying hazardous waste. In this message, the Custom Authorities were directed, *inter alia* to examine the ship and take appropriate action, if she is



found to be carrying any hazardous waste material particularly in the light of Hon'ble Supreme Court's directive in this regard. The customs authorities were also directed to submit an action taken report to CPCB following the request of ship authority for the beaching permission at Alang Ship Breaking Yard, Bhavnagar. On 21.04.2005, the Shipping Agent filed a prior IGM (Import General Manifest) in terms of Section 30 of the Customs Act, 1962. The ship was boarded at the anchorage by Customs Officer and thoroughly rummaged on 23.04.2005. The Master of ship submitted various documents to the Customs Officer at the time of Boarding which included a declaration that the ship RIKY is having no hazardous material onboard. The Customs Officer also did not find any objectionable material or hazardous waste onboard the ship. The Entry Inwards of the ship was permitted by the Customs Officer on 23.04.2005 under Section 31 of the Customs Act, 1962. On 23.4.2005, a report was sent by the customs authorities at Bhavnagar to the Zonal Officer, Central Pollution Control Board, Vadodara, as well as to the



Regional Director, Gujarat Pollution Control Board, Bhavnagar. It was informed to these authorities that no cargo of hazardous material has been found onboard the ship. It was informed that the ship has been partly rummaged i.e. the ship shall be again thoroughly rummaged after beaching by customs officers and both the authorities were requested to depute experts to conduct joint examination/inspection of the said ship. On 23.04.2005, the importer filed Bill of Entry under Section 46 of the Customs Act, 1962, which was assessed to duty and on payment of customs duty thereon, the customs authorities, at the request of the importer, issued a No Objection to the beaching of ship RIKY. It is respectfully submitted that the beaching permission is granted by Gujarat Maritime Board under the provisions of their law. The Port Officer of Gujarat Maritime Board at Alang, by his order of 23.04.05, gave permission for beaching the ship with certain conditions. On 26.04.2005, the ship was jointly examined by the officers of Customs, Gujarat Pollution Control Board and Central Pollution Control



Board. On 27-4-2005, Gujarat Pollution Control Board, vide a letter addressed to the Vice Chairman and Managing Director of Gujarat Maritime Board, Gandhinagar, requested him not to grant any permission for cutting/breaking of this ship as the matter was under reference with Ministry of Environment & Forest, Govt. of India. A copy of this letter was also endorsed to the Superintendent of Customs, Bhavnagar. Consequently, the customs authorities did not allow bunkers to be removed from ship despite a request from the importer. The importer also requested for customs-out-of-charge for the ship, which was also not granted. On 02.07.2005, the Gujarat Pollution Control Board (GPCB) issued an Order conveying a decision that the GPCB may issue a decontamination certificate subject to the conditions specified in that order. A copy of this order was also endorsed to the Superintendent of Customs, Bhavnagar and the other authorities concerned. The ship was examined by customs officers in terms of Section 17(4) of the Customs Act, 1962 on 06.07.2005, and Customs-out-of-charge was given in terms of Section 47



of the Customs Act, 1962 on 12.07.2005.
The cutting permission has been given by
the Gujarat Maritime Board
subsequently.

6. With reference to para 2 & 3 of
the application, no comments are offered.

7. With reference to para 4 of the
application, I state and submit that this
is not a case of illegal import as
mentioned hereinabove.

8. With reference to para 5 of the
application, I state and submit that Entry
Inwards and subsequent no objection for
beaching of the ship, were allowed by the
Customs authorities in accordance with
the law as mentioned hereinabove.

9. With reference to allegation
made vide para-6 of the application, no
comments are offered.



10. With reference to para-7 of the application, I state and submit that the quantity of substances which can lead to hazardous waste used in the structure of the ship is not known to the customs authorities at the time of arrival of the ship. The Hon'ble Supreme Court vide order dtd. 14.10.2003 at Page No. 43 (recommendation No. 3) have held that,

"(3) Waste generated by the ship breaking process should be classified into hazardous and non-hazardous categories, and their quantity should be made known to the concerned authority or the State Maritime Board."

So, whether the subject vessel is carrying any cancer causing substances or not and quantity thereof can only be ascertained after completion of breaking up of the vessel.

11. With reference to para 8, 9 and 10 of the application, no comments are offered.



12. With reference to para 11, 12, 13, 14 and 15 of the application, I say and submit that the ship destined for breaking is not a waste and therefore there has not been any import of hazardous waste in this case. The ship RIKY did not carry any hazardous waste onboard. It is submitted that vide Supreme Court's order dated 14.10.2003 in Writ Petition No. 657 of 1995, the ship breaking activity has been permitted subject to observance of certain guidelines.

13. With reference to para 16 and 17 of the application, no comments are offered.

14. With reference to para 18 of the application, I say that the provisions under Customs Act and Hazardous Waste (Management & Handling) Rules, 1989 and the detailed directions of the Hon'ble Supreme Court vide Order dated October 14, 2003 are the guiding principles for the customs authorities to issue no



objection for the beaching and subsequent Customs-out-of-charge as mentioned hereinabove.

15. With reference to para 19 of the application, I say and submit that the customs officers had boarded the ship on 23.04.2005, and did not find any hazardous waste or other objectionable material onboard the ship. The Superintendent of Customs, Bhavnagar had therefore given a No Objection for beaching of the ship, as submitted earlier, the beaching permission was given by the Gujarat Maritime Board under their law. The ship was inspected by the Officers of Central Pollution Control Board and Gujarat Pollution Control Board on 26.04.2005, and the Customs-out-of-charge was given on 12-07-2005, only after receipt of the Order dated 02.07.2005, of Gujarat Pollution Control Board referred to in para above.

16. With reference to Para 20 and 21 of the application, I say and submit



that the ship for breaking is not by herself a hazardous waste, and therefore, there is no requirement of Form-7 in this case. It is submitted that the customs officers have not contravened any directions of the Hon'ble Supreme Court of India.

17. With reference to Para 22 of the application, no comments are offered.

18. With reference to Para 23 of the application, I say and submit that the contention of the applicant that there was a breach of Hazardous Waste (Management & Handling) Rules, 1989 as amended, is denied as in this case there was no import of hazardous waste and therefore the applicability of Form 7A does not arise.

19. With reference to Para 24 of the application, I say and submit that customs officers had boarded the said ship at anchorage before beaching, and had not found any hazardous waste



onboard the ship. Customs-out-of-charge was given on 12.07.2005, only after receipt of the Order dated 02.07.2005, issued by the Gujarat Pollution Control Board, as I have referred to in para above.

20. With reference to Para 25, 26, 27, 28 and 29 of the application, I have no comments to offer.

21. With reference to Para 30 of the application, I say and submit that the contention of the application regarding contravention of Rule 15(2)(i) of Hazardous Waste (Management & Handling) Rules, 1989, is not correct, as this is not a case of import of hazardous waste.

22. With reference to Para 31 of the application, I say and submit that the ship MV. RIKY has been imported under the flag of DPR of Korea.



23. With reference to Para 32 of the application, I have no comments to offer as it pertains to the direction of 2nd June, 2005, by the Supreme Court Monitoring Committee.

24. With reference to Para 33 of the application, I submit that there is no case of illegal import of hazardous waste as alleged by the applicant.

25. With reference to Para 34 of the application, I say and submit that there has not been any contravention of any law or violation of the directions of the Hon'ble Supreme Court as stated hereinabove.

26. With reference to Para 35 of the application, I have no comments to offer.

27. In the light of above submissions, it is respectfully prayed that prayer made by the applicant do not



deserve any consideration by this Hon'ble Court, hence the same may be dismissed with cost.

Solemnly affirmed today on 30th day of September 2005.

[Handwritten signature]
30/9/05

(N. B. Deshmukh)
Assistant Commissioner
Customs Division
Bhavnagar
(DEPONENT)

VERIFICATION

SOLEMNLY AFFIRMED AND SIGNED IN MY PRESENCE, THIS DAY 30th SEPTEMBER, 2005, AFTER READING THE CONTENTS OF THIS AFFIDAVIT.

SERIAL NO. 1623/2005 OF
M. N. ANDHARIA
NOTARY, BHAVNAGAR.

30 SEP 2005

[Handwritten signature]

M. N. ANDHARIA
Notary Public
Court Road, BHAVNAGAR.

